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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 70, No. 177

Wednesday, September 14, 2005

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida, 54235–54242

Agriculture Department
See Agricultural Marketing Service
See Forest Service
NOTICES
Meetings:
Specialty Crop Committee, 54350

Census Bureau
NOTICES
Surveys, determinations, etc.:
Wholesale trade survey; annual, 54354–54355

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54387
Meetings:
Head Start Research and Evaluation Advisory Committee, 54387–54388

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Portland Captain of the Port Zone, OR
Correction, 54447

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54352–54354

Commodity Futures Trading Commission
PROPOSED RULES
Commodity Futures Modernization of 2000; implementation:
Trading facilities; exempt markets, derivatives transaction execution facilities and designated contract markets, etc.; technical and clarifying amendments, 54323–54324
NOTICES
Meetings; Sunshine Act, 54370

Community Development Financial Institutions Fund
NOTICES
Grants and cooperative agreements; availability, etc.:
New Markets Tax Credit Program, 54446

Defense Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Institutions of higher education ineligible for Federal funds; list, 54370
U.S. Court of Appeals for Armed Forces; practice and procedure rule changes, 54370–54372

Economic Analysis Bureau
NOTICES
Meetings:
Advisory Committee, 54355

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54372–54374

Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54408–54409

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54409–54410

Energy Department
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Rocky Flats, CO, 54374
Reports and guidance documents; availability, etc.:
Idaho Nuclear Technology and Engineering Center Tank Farm Facility; residual radioactive waste determination, 54374–54375

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Utah, 54267–54275
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alkyl (C10-C16) polyglycosides, 54281–54286
Ethylhexyl glucopyranosides, 54275–54281
Superfund program:
National oil and hazardous substances contingency plan priorities list, 54286–54293
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Utah, 54324–54325
Radiation protection programs:
Yucca Mountain, NV
Hearings, 54325–54327
Superfund program:
National oil and hazardous substances contingency plan priorities list, 54327–54334
NOTICES
Meetings:
National Drinking Water Advisory Council, 54375
Pesticide Program Dialogue Committee, 54375–54376
Science Advisory Board, 54376–54377

Pesticide programs:
Risk assessments—
Carbofuran, 54377–54379
Pesticide registration, cancellation, etc.:
Mycogen Seeds, 54379–54380
Superfund; response and remedial actions, proposed settlements, etc.:
Omega Chemical Site, CA, 54380–54381

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 54381

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 54249–54251
Airbus, 54251–54253
Boeing, 54242–54244, 54253–54258
Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 54244–54248
PROPOSED RULES
Air carrier certification and operations:
Service difficulty reports; withdrawn, 54454–54458
Airworthiness directives:
Airbus, 54321–54323
Bombardier, 54316–54318
Burkhardt Grob Luft-Und Raumfahrt GmbH & Co. KG, 54311–54314
Hamburger Flugzeughbau G.m.b.H., 54314–54316
Sabreliner, 54318–54321
NOTICES
Environmental statements; notice of intent:
Louis Armstrong News Orleans International Airport, LA; withdrawn, 54437
Exemption petitions; summary and disposition, 54437–54438

Federal Communications Commission
RULES
Common carrier services:
Individuals with hearing and speech disabilities; telecommunications relay and speech-to-speech services, 54294–54300
Minimum customer account record exchange obligations on all local and interexchange carriers; implementation
Correction, 54300–54301
Radio stations; table of assignments:
Texas, 54301
PROPOSED RULES
Radio stations; table of assignments:
New Mexico, 54334
Washington, 54334
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54381–54384
Common carrier services:
Telecommunications relay services—
Improved services; docket filing changes, 54384–54385

Federal Maritime Commission
NOTICES
Agreements filed, etc., 54385
Ocean transportation intermediary licenses:
Bermuda Freight Systems Inc. et al., 54385
Central American Shipping Agency Inc. et al., 54385–54386
Federal Cargo Inc. et al., 54386

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54438

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 54386
Meetings; Sunshine Act, 54386–54387

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
United We Ride Initiative; State coordination grants, 54438–54441

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Rota bridled white-eye, 54335–54349
NOTICES
Endangered and threatened species permit applications, 54401
Environmental statements; notice of intent:
Howland Island, Baker Island, and Jarvis Island National Wildlife Refuges, U.S. territories, Pacific Ocean; conservation plan, 54401–54402
Rio Grande silvery minnow; meetings; correction, 54402–54403

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54388–54394

Foreign Assets Control Office
RULES
Iraqi sanctions regulations:
Iraqi debt unblocked, 54258–54259

Forest Service
NOTICES
Environmental statements; notice of intent:
Plumas National Forest, CA, 54350–54352
Meetings:
Resource Advisory Committees—
Ketchikan, 54352

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
RULES
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalties imposition, and hearings; expiration date extension, 54293–54294

Homeland Security Department
See Coast Guard
NOTICES
United States Visitor and Immigrant Status Indicator Technology Program (US-VISIT):
Biometric data collection from alien travelers; list of land border ports of entry; additions, 54398–54400

Housing and Urban Development Department
PROPOSED RULES
Government National Mortgage Association (Ginnie Mae):
Excess yield securities, 54450–54451
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54400–54401
Senior Executive Service:
Performance Review Board; membership, 54401

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Attained age of the insured under section 7702; hearing cancellation, 54324

International Trade Administration
NOTICES
Antidumping:
Automotive replacement glass windshields from—
China, 54355–54358
Fresh garlic from—
China, 54358–54359
Low enriched uranium from—
France, 54359–54360
Preserved mushrooms from—
China, 54361–54365
Countervailing duties:
Pure magnesium and alloy magnesium from—
Canada, 54367–54368
Applications, hearings, determinations, etc.:
Agriculture Department, National Animal Disease Center, 54365
Oregon Health and Science University, et al., 54365–54366
University of California, San Diego, et al., 54366–54367

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54408

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
McInnis Canyons National Conservation Area Advisory Council, 54403

Merit Systems Protection Board
NOTICES
Case processing procedures; variations placed into effect as result of Hurricane Katrina, 54410–54411

Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54403–54406
Environmental statements; notice of intent:
Alaska OCS—
Oil and gas lease sales, 54406–54408

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54411

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 54394–54396
Meetings:
National Center for Complementary and Alternative Medicine, 54396
National Library of Medicine, 54396–54397
Scientific Review Center, 54397–54398

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 54302–54309
NOTICES
Grants and cooperative agreements; availability, etc.:
Coral Reef Ecosystem Studies Program, 54368–54369
Permits:
Marine mammals, 54369–54370

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Scarpelli, Joseph, 54310–54311
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54411–54412
Meetings:
R.E. Ginna Nuclear Power Plant site, NY; proposed partial release for unrestricted use, 54416–54417
Applications, hearings, determinations, etc.:
Calvert Cliffs Nuclear Power Plant, Inc., 54412–54416
South Carolina Electric & Gas Co., 54416

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
RULES
Cooperative Research and Technology Enhancement Act of 2004; implementation, 54259–54267

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 54441–54443
Safety advisories—
Compressed gas cylinders; unauthorized marking, 54444

Presidential Documents
PROCLAMATIONS
Special observances:
Minority Enterprise Development Week (Proc. 7926), 54459–54462

National Days of Prayer and Remembrance (Proc. 7928), 54465–54466
National Historically Black Colleges and Universities Week (Proc. 7927), 54463–54464
Patriot Day (Proc. 7929), 54467–54468

Securities and Exchange Commission
NOTICES
Public Utility Holding Company Act of 1935 filings, 54421–54424
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 54424–54425
National Securities Clearing Corp., 54425–54427
New York Stock Exchange, Inc., 54427–54431
Pacific Exchange, Inc., 54431–54432
Applications, hearings, determinations, etc.:
Eaton Vance Senior Income Trust, et al., 54417–54420
Royal Dutch Petroleum Co., 54420–54421

Small Business Administration
NOTICES
Disaster loan areas:
Kansas, 54432
Louisiana, 54432–54433
Mississippi, 54433
Meetings:
National Small Business Development Center Advisory Board, 54433

Trade Representative, Office of United States
NOTICES
African Growth and Opportunity Act; implementation:
Sub-Saharan African countries; benefits eligibility; annual review, 54433–54435
Generalized System of Preferences:
2005 and ongoing country practice reviews; dates schedule, 54435–54436
Trade Act of 1974:
Identification of countries under Section 182; comment request, 54436–54437

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Community Development Financial Institutions Fund
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 54444–54445
Meetings:
Federal Tax Reform, President's Advisory Panel, 54445

Separate Parts In This Issue

Part II
Housing and Urban Development Department, 54450–54451

Part III
Transportation Department, Federal Aviation Administration, 54454–54458

Part IV
Executive Office of the President, Presidential Documents, 54459–54468

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7926 54461
7927 54463
7928 54465
7929 54467

7 CFR

905 54235

10 CFR

Proposed Rules:

54 54310

14 CFR

39 (6 documents) 54242, 54244, 54247, 54249, 54251, 54253

Proposed Rules:

39 (5 documents) 54311, 54314, 54316, 54318, 54321
121 54454
125 54454
135 54454

17 CFR

Proposed Rules:

36 54323
37 54323
38 54323
39 54323
40 54323

24 CFR

Proposed Rules:

320 54450

26 CFR

Proposed Rules:

1 54324
301 54324

31 CFR

575 54258

33 CFR

165 54447

37 CFR

1 54259
3 54259

40 CFR

52 54267
180 (2 documents) 54275, 54281
300 54286

Proposed Rules:

52 54324
197 54325
300 54327

45 CFR

160 54293

47 CFR

64 (3 documents) 54294, 54298, 54300
73 54301

Proposed Rules:

73 (2 documents) 54334

50 CFR

648 54302

Proposed Rules:

17 54335

Rules and Regulations

Federal Register
Vol. 70, No. 177
Wednesday, September 14, 2005

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV05–905–2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying Procedures and Establishing Regulations To Limit Shipments of Small Sizes of Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule limits the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market and changes procedures used for this purpose under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (Committee). The procedural changes modify the way a handler's average week is determined by providing that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be used for the three-season average. The average week is used by the Committee in determining the handler shipment allotments. This rule also limits the volume of small sizes entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action is intended to make the regulation more responsive to industry needs and provide adequate supplies of small red seedless grapefruit without saturating all markets. It is expected to stabilize supplies and improve grower returns.

DATES: Effective September 15, 2005; comments received by October 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*; 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: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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. 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 changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by modifying the way a handler's average week is determined. The procedural changes provide that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be substituted in the three-season average. This rule also limits the volume of small sized red seedless grapefruit entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action is intended to make the regulation more responsive to industry needs and provide adequate supplies of small red seedless grapefruit without saturating all markets. It is expected to stabilize supplies and improve grower returns. The Committee unanimously recommended this action at a meeting held on May 10, 2005.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler

during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations specifies procedures for limiting the volume of small red seedless grapefruit entering the fresh market. These procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit can be made available for fresh shipment for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the recommended percentage is applied to each handler's average week to determine the quantity of sizes 48 and 56 red seedless grapefruit the handler may ship. The average week constitutes the prior period specified in § 905.52. Therefore, an average week is calculated for each handler.

Currently, an average week is calculated using the immediately preceding three seasons. This rule amends § 905.153 to modify the way a handler's average week is determined. Provisions are added providing that if crop conditions limit shipments from any of the three prior seasons, a prior season or seasons can be used for the three-season average.

An average week is calculated by adding the total red seedless grapefruit shipments by a handler during the 33-week period beginning the third Monday in September for the immediately preceding three seasons. This total is divided by three to establish an average season, and is then divided by the 33 weeks in a season to derive the average week. When the Committee utilizes the provisions of § 905.153 and establishes percentages for the regulatory period, a handler's average week is multiplied by the applicable percentage to establish that handler's allotment for shipping small red seedless grapefruit during that particular week.

In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes. The official USDA crop estimate for the 2004–05 season reflected a 69 percent decrease from the previous season's estimate. Fresh shipments of red grapefruit for the 2004–05 season were reduced by more than 63 percent in comparison to the 2003–04 season. Consequently, the percentage of size regulation was not utilized for the 2004–05 season.

The Committee met May 10, 2005, to consider implementing a percentage of size regulation for red seedless grapefruit for the 2005–06 season. During its discussions, concerns were raised regarding the impact of the 2004–05 season when calculating a handler's average week. Most handlers' shipments reflect a significant decline in volume for the 2004–05 season, with some handlers shipping no volume at all due to the damage sustained by their packinghouses. The Committee believes using figures from a season in which adverse crop conditions cause a reduction in the amount of fruit produced would distort the accuracy of a handler's average shipments. Committee members agreed including the 2004–05 season in the calculation of a handler's average week would result in averages that are not reflective of a handler's average shipments.

When a handler is fairly consistent in the amount of fruit shipped each season, one season of decreased volume has the potential to drastically reduce their shipment average. With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week on which the percentage of size regulation is based, decreasing a handler's allotment of small grapefruit sizes.

Including the 2004–05 season in base calculations would reduce the total base available to the industry by more than 20 percent. However, the impact on individual handlers could be as great as reducing their base by a third. Therefore, the Committee voted unanimously to change § 905.153 to exclude the 2004–05 season when calculating a handler's average week.

To accommodate this recommendation and provide a method to handle similar situations should they occur during future seasons, this rule amends § 905.153 to provide that should shipments from any or all of the immediately preceding three seasons be limited because of crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. Under this change, the Committee would meet prior to the issuance of a percentage size regulation and determine which seasons are to be used to calculate a handler's average week. This change gives the Committee some additional flexibility to account for adverse crop conditions and assists in providing an average reflective of a handler's normal shipments. For the 2005–06 season, each handler's average week will be computed using the 2001–02, 2002–03, and the 2003–04 seasons.

This interim final rule also limits the volume of sizes 48 (3 9/16 inches minimum diameter) and 56 (3 5/16 inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2005–06 season. This rule establishes weekly percentages at 35 percent for the first six weeks (September 19, 2005 through October 30, 2005), and 25 percent for weeks seven through 22 (October 31, 2005 through February 19, 2005). The Committee also unanimously recommended this action at its May 10, 2005, meeting. This action is similar to those taken in previous seasons.

A normal season for Florida grapefruit runs from September through June. During the first 22 weeks, there is usually an oversupply of small red seedless grapefruit and a reduced demand for such fruit until later in the season when there is a greater demand for smaller sizes from export markets. The Committee believes the over shipment of smaller-sized red seedless grapefruit in the first 22 weeks of the season has a detrimental effect on the market.

While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. When there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes. This action is intended to stabilize the early season (22-week) supply of small red seedless grapefruit and to help improve the prices received by growers. In the absence of this action, grower prices may be lower than their cost of production.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1 3/5 bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for the larger, more profitable sizes would increase.

Consequently, in 1996, the Committee recommended changing their rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks for the 2001–02, 2002–03, and 2003–04 seasons. Due to the extensive damage from three major hurricanes in 2004, percentage of size regulation was not utilized for the 2004–05 season. When percentage of size regulation has been utilized, prices have increased and movement stabilized when compared to seasons without regulation.

Because of the damage from the 2004 hurricanes, production of red seedless grapefruit for the 2005–06 season is not anticipated to be as large as in seasons past. The crop is expected to rebound from last season's weather reduced volume. However, an accurate estimate of the crop will not be available until the official USDA crop estimate is released in October. In addition, for four of the last five seasons prior to the hurricanes, the crops have displayed a tendency toward a greater volume of small sizes than in previous seasons. It is possible that trees stressed by last season's storms may produce an even greater volume of small-sized fruit.

Based on the available information, the Committee believes that for the 2005–06 season, small sized red seedless grapefruit would again negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000 carton per week level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted unanimously to utilize the provisions of § 905.153 and establish percentage of size regulation for each week of the 22-week regulatory period for the 2005–06 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. One such indicator is a study commissioned by the Committee to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled ''An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule,'' dated July 1, 2003, evaluated the effectiveness of past percentage of size regulations.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the last seven seasons compared to $5.83 for the three seasons prior to using percentage of size regulation. The Barber study shows that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $5.28 for the seasons 1998–99 through 2003–04 with percentage of size regulation compared to $3.08 for the three seasons prior to regulation.

In September 2004, the University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2003–04 season. The cost to produce grapefruit for the fresh market was estimated at $1,089.13 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production ranges from 325 boxes per acre to 525 boxes per acre and has averaged around 445 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.45 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with regulation, 1998–99 through 2003–04, the on-tree value has averaged $2.88 per box for red grapefruit.

Small growers have struggled the last ten seasons to receive returns above the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals for percentage of size regulation was maintaining the price differential between larger and smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. For 2003–04, the f.o.b. price for a size 27 averaged $12.38 per carton in October 2003. This compares to an average f.o.b. price of around $6.38 per carton for a size 56 during the same period. In the three seasons before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three seasons before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the seven seasons

with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.51 at the end of October, $3.83 in mid-December, and remained at around $3.36 the first week in May. The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, they further indicated that if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), the margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last seven seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 80 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited affect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

There are also other conditions warranting the consideration of establishing percentage of size regulation for the 2005–06 season. For the five seasons, 1999–2000 through 2003–04, the percentage of the remaining crop represented by small sizes in February averaged around 45 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These five seasons, 1999–2000 through 2003–04, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98.

For the eight of the nine seasons prior to the 2004–05 season, there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. Currently, it is unclear how the 2005–06 crop will size. Due to hurricane damage in 2004, it is anticipated that the 2005–06 crop will be smaller than in past seasons, but production will be significantly greater than last season. However, it is possible that because of the weather damage sustained during the 2004–05 seasons, a larger quantity of the fruit produced may be small sizes, making an even greater supply of small-sized fruit available for market.

European and Asian markets also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. The increase in the value of currency in these markets compared to the dollar resulted in more shipments of smaller-sized red seedless grapefruit to these markets. However, a reduction in shipments to these areas could occur during the coming season if market conditions change. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 48 percent of red seedless grapefruit was used for processing in 2003–04, with the majority being squeezed for juice. However, this outlet offers limited returns. Of the last eight seasons, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. Returns for 2003–04 processed red seedless grapefruit averaged a negative $0.13 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1999–2000 through 2003–04, the differential between fresh prices and processed prices has averaged $5.06 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

By the start of the season, the Florida Department of Citrus projects that around 26 weeks worth of juice will remain in inventory. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2005–06 season are expected to remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional volume of small sizes could be shifted toward the fresh market, as was the case last season, further aggravating problems with excessive volumes of small sizes.

The percentage of size regulation has a positive impact on grower returns and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the seven seasons prior to the hurricanes have been effective and that problems successfully addressed by percentage of size regulation will return without regulation. In its discussion of this issue, the Committee recognized that the crop size would reflect the damage sustained from last season's hurricanes. However, they still support the use of percentage size regulation for the 2005–06 season.

Even though the overall crop may be reduced, a substantial increase in volume is expected in comparison to the 2004–05 season. In addition, as was the case last season, a greater percentage of the overall volume may be shifted to the

fresh market, further increasing fresh shipments. In the seasons prior to last season, approximately 50 percent of the crop went for processing. However, with last season's weather reduced crop, approximately 65 percent of the crop was shipped to the fresh market. Further, it is anticipated that a greater percentage of the crop will be small sizes. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2005–06 season. The Committee recommended establishing weekly percentages at 35 percent for the first six weeks and 25 percent for weeks seven through 22.

The Committee considered the percentages set in previous seasons as a basis for the 2005–06 season. They also took into consideration the damage to the citrus industry as a result of the 2004 hurricanes and how more information regarding the crop would be available following the start of the season. Members of the Committee agreed that there will be a smaller than usual crop of red seedless grapefruit for the 2005–06 season, but believe that percentages need to be established to prevent a glut on the market to provide some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages, and set the first six weeks at 35 percent. Setting the percentages at 35 percent provides a total industry base of 242,739 cartons (35 percent of the total industry base of 693,540 cartons). This allows total industry shipments to approach the 250,000 carton level without exceeding it.

For the remaining 16 weeks, the Committee recommended setting weekly percentages at 25 percent, the tightest restriction allowed under the order's rules and regulations. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes, the size of the overall crop, or the impact of the lingering effects of last season's storms. The Committee recognized the first reports on how the crop is sizing will not be available until after September, and that more information regarding the current season will be available following the official USDA crop estimate in October.

Setting the weekly percentages at 25 percent for each of the remaining weeks provides the Committee with the greatest flexibility in responding to the information regarding this season as it comes available. As was their practice during the first seasons of percentage of size regulation, the Committee believes it is best to set regulation for these weeks at the most restrictive level, and then relax the percentage as conditions warrant.

Because of the likelihood that this season will differ considerably from previous seasons where percentage of size regulation was implemented, the Committee wants to ensure it has the best information available when considering the established percentages. Consequently, the Committee intends to meet as needed during the season to consider adjustments in the weekly percentage rates, as was done in previous seasons. Further, at the May 10, 2005, meeting, it was stated that the 48 and Smaller Red Grapefruit Subcommittee (subcommittee) will meet shortly after the 2005–06 crop estimate is released on October 11, 2005. At that time, the subcommittee will review the information available and develop recommendations for consideration by the full Committee, including increasing the set percentages to release greater quantities of sizes 48 and 56, or even withdrawing regulation should conditions warrant.

Therefore, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season based on the additional information as it comes available. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

This rule establishes weekly percentages at 35 percent for the first six weeks and 25 percent for weeks seven through 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. The set percentage is applied to a handler's average week to determine that handler's allotments of small sizes. Utilizing the provisions discussed in the first part of this rule and the Committee's recommendation at its May 10, 2005, meeting, a handler's average week for the 2005–06 season will be calculated using the 2001–02, 2002–03, and 2003–04 seasons.

Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period begins the third Monday in September, September 19, 2005. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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 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 75 handlers of Florida grapefruit who are subject to regulation under the marketing order

and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2003–04 season was approximately $7.58 per 4/5-bushel carton, and total fresh shipments for the 2003–04 season are estimated at 24.7 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 80 percent of the grapefruit handlers could be considered small businesses under the SBA definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

This rule changes the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by modifying the way a handler's average week is determined. The changes provide that if crop conditions limit shipments from any of the immediately preceding three seasons, a prior season or seasons can be used for the three-season average. This rule also limits the volume of small sizes entering the fresh market for the first 22 weeks of the 2005–2006 season beginning September 19, 2005. This action makes the regulation more responsive to industry needs and provides adequate supplies of small red seedless grapefruit without saturating all markets. This is intended to help stabilize supplies and improve grower returns. This rule revises the provisions of § 905.153 and utilizes these provisions to establish the percentage size regulation. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended these changes at a meeting held on May 10, 2005.

The first action in this rule revises the procedures in § 905.153 used in implementing percentage size regulations for small red seedless grapefruit under the order. These procedures will be applied uniformly for all handlers regardless of size. This action is not expected to decrease the overall consumption of red seedless grapefruit or result in any additional costs for the industry.

Prior to this change, a handler's average week, which is used as a base during percentage of size regulation, was calculated using the immediately preceding three seasons. This change provides that should shipments from any or all of the three prior seasons be limited because of crop conditions, the Committee could use a prior season or seasons when determining the three-season average for the purpose of calculating a handler's average week. This change provides the Committee with some additional flexibility to account for adverse crop conditions and assists in providing an average reflective of a handler's normal shipments.

Using shipment figures from a season where adverse crop conditions reduced the amount of fruit shipped would distort the accuracy of a handler's average shipments. In 2004, the major grapefruit growing regions in Florida suffered significant damage and fruit loss from multiple hurricanes, reducing the official USDA crop estimate by 69 percent from the previous season. Most handlers' shipments reflected a significant decline in volume, with some handlers shipping no volume at all due to the damage sustained by their packinghouses.

With the handler's average week based on a three-season average, including a season such as last season could significantly lower the handler's average week, decreasing a handler's allotment of small size. Including the 2004–05 season in base calculations for the 2005–06 season would reduce the total industry base available by more than 20 percent, with the possible reduction for individual handlers being as much as a third.

Consequently, this change provides additional allotment in seasons following years where the crop was reduced by adverse weather conditions. It allows the Committee to exclude those seasons, thus, providing an average week that more closely reflects a handler's shipments and makes additional allotment available.

In terms of the second action implemented by this rule, while the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates that spot picking only fractionally increases harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this action is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an estimated average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

Handlers can also transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments (over shipments are not allowed during the last regulated week). Approximately 315 loans and transfers were used during the 2003–04 season. Statistics for 2003–04 show the total available allotment was used in only 3 weeks of the regulated period. Therefore, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2005–06 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation than without regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the seven seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.26 per carton in October, to an average f.o.b. price of $7.12 per carton in December, and remained at around $7.09 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.10 for the seven seasons utilizing percentage of size regulation compared to $5.83 for the three seasons prior to using

regulation. The Barber study estimates that prices for the seasons 1997–98 to 2002–03 would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $5.28 for the seasons 1998–99 through 2003–04 with percentage of size regulation, compared to $3.08 for the three seasons prior to regulation. Small growers have struggled the last nine seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period.

The Barber study estimates that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per 4/5-bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently, any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the consumption of red seedless grapefruit. The benefits of this action are expected to be available to all red seedless grapefruit growers and handlers regardless of their size of operation. This action will likely help small, under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing these actions. One alternative was maintaining the way a handler's average week is calculated using the immediately preceding three seasons. The Committee believes that including numbers from the 2004–05 season would result in averages unreflective of a handler's shipments. Therefore, this alternative was rejected. The Committee also considered not recommending percentage of size regulation for the 2005–06 season. However, because more information regarding the season would be available in October, the Committee agreed percentage of size regulation should be established at the levels recommended. Following the announcement of the official crop estimate on October 11, 2005, the question of whether to adjust the levels recommended or to remove regulation entirely will be revisited. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 10, 2005, meeting was a public meeting and all entities, both large and small, were able to express their 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 revising the procedures used to limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market under the order and on limiting the volume of small red seedless grapefruit entering the fresh market during the first 22 weeks of the 2005–06 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee'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 exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in place when the regulatory period begins September 19, 2005, and handlers need to consider their allotment and how best to service their customers; (2) the industry has been discussing this issue for some time, and the Committee has kept the industry well informed; (3) this action has been widely discussed at various industry and association meetings, and interested persons have had time to determine and express their positions; (4) this action is similar to those recommended in previous seasons; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. A comment period of 30 days is appropriate because it will allow for any needed intra-seasonal changes to be made in a timely manner.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.153 [Amended]

■ 2. In § 905.153, paragraph (a), a new sentence is added following the third sentence to read as follows: ''If crop conditions limit shipments from any or all of the immediately preceding three season(s), the committee may use a prior season or seasons for the purposes of calculating an average week.''

■ 3. Section 905.350 is added to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks, are as follows:

Week	Weekly percentage
(a) 9/19/05 through 9/25/05	35
(b) 9/26/05 through 10/2/05	35
(c) 10/3/05 through 10/9/05	35
(d) 10/10/05 through 10/16/05	35
(e) 10/17/05 through 10/23/05	35
(f) 10/24/05 through 10/30/05	35
(g) 10/31/05 through 11/6/05	25
(h) 11/7/05 through 11/13/05	25
(i) 11/14/05 through 11/20/05	25
(j) 11/21/05 through 11/27/05	25
(k) 11/28/05 through 12/4/05	25
(l) 12/5/05 through 12/11/05	25
(m) 12/12/05 through 12/18/05	25
(n) 12/19/05 through 12/25/05	25
(o) 12/26/05 through 1/1/06	25
(p) 1/2/06 through 1/8/06	25
(q) 1/9/06 through 1/15/06	25
(r) 1/16/06 through 1/22/06	25
(s) 1/23/06 through 1/29/06	25
(t) 1/30/06 through 2/5/06	25
(u) 2/6/06 through 2/12/06	25
(v) 2/13/06 through 2/19/06	25

Dated: September 9, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18279 Filed 9–13–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20475; Directorate Identifier 2004–NM–157–AD; Amendment 39–14250; AD 2005–18–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This AD requires modification of the splice plate assemblies installed under the floor panels at the forward and aft edges of the cabin aisle. This AD results from reports of cracking of the aluminum splice plates under the floor panels in the cabin aisle. We are issuing this AD to prevent loss of the capability of the cabin floor and seat track structure to support the airplane interior inertia loads under emergency landing conditions. Loss of this support could lead to galley or seat separation from attached restraints, which could result in blocking of the emergency exits and consequent injury to passengers and crew.

DATES: This AD becomes effective October 19, 2005.

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

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can 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 U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2005–20475; the directorate identifier for this docket is 2004–NM–157–AD.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777–200, –200ER, and –300 series airplanes. That action, published in the **Federal Register** on March 3, 2005 (70 FR 10337), proposed to require modification of the splice plate assemblies installed under the floor panels at the forward and aft edges of the cabin aisle.

Comments

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

Request To Add Optional Inspection Program

One commenter asks that, in addition to the terminating action specified in the proposed AD, an optional inspection program be implemented to do inspections of the most affected areas, with replacement or repair of affected parts on attrition. The commenter states that such an inspection should be added as a compliance option, in lieu of a full modification, or in conjunction with a longer compliance time. The commenter adds that, in order to accomplish the modification, access to some locations will be difficult; therefore, consideration should be given to adding inspections to extend the compliance time. The commenter suggests adding to the proposed AD an internal general visual inspection of the floor splice plates that are visible from the forward and aft pit. In addition, the commenter recommends inspecting from above for flexing and ''clicking'' noises commonly associated with splice plate cracking of the remaining areas located in the overwing section and not viewable from the pits. The commenter suggests that the inspections be done at intervals no longer than 48 months apart, and that a full general visual inspection of all affected splice plates be done within a 72-month period to allow for normal maintenance cycles that facilitate the inspection.

The commenter states that it was instrumental in identifying and reporting cracked splice plate discrepancies to the airplane manufacturer in December 1999. The reports brought about changes addressing the subject issue that were

added to both the structural repair and airplane maintenance manuals for Boeing Model 777 airplanes. The commenter adds that its findings were significant enough to justify creating a specific maintenance program that contained procedures for finding and addressing the cracking in most affected areas. The inspections revealed an overwhelming propensity for cracking in the aisle nearest the passenger entry doors 1L and 2L. The commenter concludes that the approach of inspecting aisle and entry floor panels at 3C intervals has been highly effective in managing this issue.

We do not agree with the commenter's request. We understand that there are splice plates in some areas that can be inspected from below, but there are several inaccessible areas where difficulty gaining access would not allow for an inspection. The inspection methods suggested by the commenter are not reliable for those inaccessible areas. Further, inspection of other splice plates from below is of questionable reliability in determining the onset of cracking. Also, partially cracked splice plates and splice plates with repairs of unknown reliability are not acceptable for addressing the unsafe condition. For these reasons, we have determined that the modification required by the AD is the most effective method of addressing the identified unsafe condition. We note that the 60-month compliance time should allow for modification during normal maintenance cycles for most affected operators. However, under the provisions of paragraph (h) of this AD, if adequate technical justification is provided, affected operators may request approval of an alternative method of compliance (AMOC).

Request To Consider Alternative Action

One commenter states that it has paperwork in place to accomplish the proposed AD, but has some concerns about the methods proposed for solution to the described problem. The commenter notes that it appears that the unsafe condition specified in the proposed AD is a design flaw, though the airplane manufacturer has not accepted the responsibility for a resolution. The commenter concludes that, because of that fact, the manufacturer should re-address the problem and come up with a secondary solution that would not require replacement of the splice straps.

We do not agree with the commenter. The airplane manufacturer has developed an improved splice plate to correct the unsafe condition. The FAA has determined that the proposed modification (replacement of the splice straps) is necessary to address the unsafe condition specified in the proposed AD, which is due to cracking of the aluminum splice plates. We did not include the option of accomplishing inspections because access to many of the affected areas is limited, so an inspection would not provide reliable results. Therefore, replacing the splice straps with new, improved splice straps is the most effective way to address the unsafe condition. Additionally, the proposed AD allows a 60-month compliance time to allow for accomplishing the modification during regular maintenance visits. However, under the provisions of paragraph (h) of this AD, if adequate technical justification is provided, affected operators may request approval of AMOC.

Request To Change Costs of Compliance Section

One commenter states that, because the cause of the unsafe condition specified in the proposed AD is a design flaw that has not been resolved, the commenter must bear the cost of 48 work hours per airplane to accomplish the proposed modification. The commenter adds that gaining access to some locations to accomplish the modification will be difficult, and estimates that this modification would cost approximately $200,000 for labor and $308,000 for material for its entire fleet. The commenter does not provide a specific request.

We infer that the commenter is asking us to change the ''Costs of Compliance'' section of this AD. We do not agree. The estimate of 28 work hours per airplane is based on the best data available to date, and is consistent with the manufacturer's estimate contained in the service bulletin. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. We recognize that in accomplishing the requirements of any AD, operators may incur incidental costs in addition to the direct costs. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. We have not changed the AD in this regard.

Explanation of Change to Proposed AD

The applicability in the proposed AD addresses ''Boeing Model 777–200, –200ER, and –300 series airplanes.'' We inadvertently included Model 777–200ER series airplanes, which are not specified on the type certificate data sheet and are encompassed within the Model 777–200 series. Our intent is that the AD apply to certain Boeing Model 777–200 and –300 series airplanes; therefore, we have changed the applicability in this AD accordingly.

Conclusion

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

Costs of Compliance

There are about 330 airplanes of the affected design in the worldwide fleet. This AD affects about 131 airplanes of U.S. registry. The modification will take about 28 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost between $4,717 and $9,099 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is between $856,347 and $1,430,389, or between $6,537 and $10,919 per airplane.

Authority for this Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–18–10 Boeing: Amendment 39–14250. Docket No. FAA–2005–20475; Directorate Identifier 2004–NM–157–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–53–0042, dated April 15, 2004.

Unsafe Condition

(d) This AD results from reports of cracking of the aluminum splice plates under the floor panels in the cabin aisle. We are issuing this AD to prevent loss of the capability of the cabin floor and seat track structure to support the airplane interior inertia loads under emergency landing conditions. Loss of this support could lead to galley or seat separation from attached restraints, which could result in blocking of the emergency exits and consequent injury to passengers and crew.

Compliance

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

Modification

(f) Within 60 months after the effective date of this AD: Except as provided by paragraph (g) of this AD, modify the splice plate assemblies installed under the floor panels at the forward and aft edges of the cabin aisle (including replacement of damaged fasteners with new fasteners) in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–53–0042, dated April 15, 2004.

(g) The referenced service bulletin recommends marking the service bulletin number on the top of the floor panel assembly, but this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(h) 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.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 777–53–0042, dated April 15, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17985 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21302; Directorate Identifier 2004–NM–189–AD; Amendment 39–14267; AD 2005–19–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–110P1 and EMB–110P2 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes. This AD requires repetitive inspections for corrosion or cracking of the rotating cylinder assembly in the nose landing gear (NLG), and related investigative/corrective actions if necessary. This AD also requires the eventual replacement of the rotating cylinder assembly with a new part, which terminates the need for the repetitive inspections. This AD results from reports of corrosion on the NLG rotating cylinder assembly. We are issuing this AD to prevent cracks from emanating from corrosion pits in the NLG rotating cylinder assembly, which could result in failure of the NLG.

DATES: Effective October 19, 2005.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in

person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes. That NPRM was published in the **Federal Register** on May 25, 2005 (70 FR 30028). That NPRM proposed to require repetitive inspections for corrosion or cracking of the rotating cylinder assembly in the nose landing gear (NLG), and related investigative/corrective actions if necessary. That NPRM also proposed to require the eventual replacement of the rotating cylinder assembly with a new part, which terminates the need for the repetitive inspections.

Comments

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

Request for Clarification of Paragraph (g)

The commenter asks for clarification of the language used to identify the location of the instructions for the evaluation inspection specified in paragraph (g) of the NPRM. The commenter reiterates the language used in that paragraph and asks that paragraph (g) be changed to read, ''Within 150 flight hours or 4 months after the effective date of this AD, whichever is first: Perform the evaluation inspection for corrosion or cracking of the nose landing gear (NLG) rotating cylinder assembly, by doing all the actions specified in the Evaluation Inspection section of EMBRAER Service Bulletin 110–32–0088, Revision 03, Part II.'' (Part II of the service bulletin is identified in the NPRM as the location of the procedures for performing the evaluation inspection.)

We infer that the commenter is asking that paragraph (g) of this AD be changed to identify the exact location of the procedures used for accomplishing the evaluation inspection specified in the service bulletin. Those procedures are identified in the ''Evaluation Inspection'' section of the service bulletin (paragraph 2.3.1.1.). We agree and have identified that section in paragraph (g) for clarification.

Request To Change Paragraph (h)(1) To Add Terminating Action

The commenter asks that paragraph (h)(1) of the NPRM be changed to add that accomplishing the requirements specified in that paragraph would terminate the requirements specified in paragraph (i) of the NPRM. The commenter states that it is not necessary to replace the NLG rotating cylinder with a new one, as required by paragraph (i), if the bench detailed inspection specified in paragraph (h)(1) reveals no signs of corrosion or cracking. The commenter notes that the protective coating must be applied in order to resume normal operation of the airplane. The commenter reiterates the language used in paragraph (h)(1) and asks that it be changed to read, ''If no corrosion or cracking is found during any inspection, before further flight: Perform all of the actions specified in the Protection Procedure section of EMBRAER Service Bulletin 110–32–0088, Revision 03, Part II. Application of this protection on parts with no signs of corrosion or cracking terminates the requirement of paragraph (i).''

We do not agree to change paragraph (h)(1) of the AD. Application of the protective coating on parts with no signs of corrosion or cracking does not terminate the requirements of paragraph (i) of the AD. Eventual replacement of the NLG is required regardless of inspection findings, and only that replacement terminates the repetitive inspections required by this AD.

Clarification of Paragraph (f) and Note 1

We have changed paragraph (f) and Note 1 of the NPRM to provide the correct service bulletin citation.

Conclusion

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

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections in Part II of service bulletin, per inspection cycle.	5	$65	None	$325	30	$9,750, per inspection cycle.
Application of protection compound	2	65	None	130	30	$3,900.
Replacement of rotating cylinder assembly (terminating action).	9	65	$38,000	38,585	30	$1,157,550.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–02 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14267. Docket No. FAA–2005–21302; Directorate Identifier 2004–NM–189–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of corrosion on the rotating cylinder assembly in the nose landing gear (NLG). We are issuing this AD to prevent cracks from emanating from corrosion pits in the NLG rotating cylinder assembly, which could result in failure of the NLG.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of EMBRAER Service Bulletin 110–32–0088, Revision 03, dated February 11, 2004.

Inspections and Related Investigative/ Corrective Actions

(g) Within 150 flight hours or 4 months after the effective date of this AD, whichever is first: Perform the evaluation inspection for corrosion or cracking of the NLG rotating cylinder assembly, by doing all the actions in accordance with Part II, paragraph 2.3.1.1., ''Evaluation Inspection,'' of the service bulletin. Depending on the results of the inspections, perform the applicable action specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) If no corrosion or cracking is found: Perform the bench detailed inspection of the rotating cylinder assembly required by paragraph (h) of this AD at the time specified in paragraph (h) of this AD.

(2) If only light corrosion is found: Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 150 flight hours or 4 months, whichever occurs first, until the requirements specified in paragraph (h) or (i) of this AD are accomplished.

(3) If severe corrosion is found: Before further flight, perform the bench detailed inspection of the rotating cylinder assembly required by paragraph (h) of this AD for evidence of further corrosion or cracking.

Note 1: The criteria for determining light or severe corrosion are included in EMBRAER Service Bulletin 110–32–0088, Revision 03, dated February 11, 2004. The presence of oxidation is not considered to be corrosion.

(4) If any cracking is found, before further flight: Replace the rotating cylinder assembly with a new part, in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the requirements of paragraphs (h) and (i) of this AD.

Bench Inspections, Protection Procedures, and Corrective Actions

(h) Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first: Perform the bench detailed inspection for corrosion or cracking of the NLG rotating cylinder assembly in accordance with Part II of the service bulletin.

(1) If no corrosion or cracking is found during any inspection, before further flight: Perform all of the actions specified in Part II, paragraph 2.3.1.3., ''Protection Procedure,'' of the service bulletin.

(2) If only light corrosion is found during any inspection, before further flight: Perform all of the actions specified in Part II, paragraph 2.3.1.3., ''Protection Procedure,'' of the service bulletin. Thereafter, repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 600 flight hours or 9 months, whichever occurs first, until accomplishing paragraph (i) of this AD.

(3) If any cracking or severe corrosion is found during any inspection, before further flight: Replace the rotating cylinder assembly with a new part in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the inspections required by paragraphs (g)(2) and (h)(2) of this AD.

Replacement

(i) If any NLG rotating cylinder assembly is found to have light corrosion during any inspection required by paragraph (g)(2) or (h)(2) of this AD, as applicable: Within 3,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace the NLG rotating cylinder assembly with a new part, in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the inspections required by paragraphs (g)(2) and (h)(2) of this AD.

Actions Accomplished Previously

(j) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 110–32–0088, Revision 01, dated September 1, 2003; or EMBRAER Service Bulletin 110–32–0088, Revision 02, dated October 30, 2003; are acceptable for compliance with the corresponding requirements of this AD.

Reporting Not Required

(k) Where the service bulletin states to report inspection results to EMBRAER, that action is not required by this AD.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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) Brazilian airworthiness directive 2004–04–01R1, effective July 27, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(n) Unless otherwise specified in this AD, the actions must be done in accordance EMBRAER Service Bulletin 110–32–0088, Revision 03, dated February 11, 2004, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–8	03	February 11, 2004.
2–7, 9 ...	01	September 1, 2003.

The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER),

P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA).

For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18057 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21345; Directorate Identifier 2005–NM–005–AD; Amendment 39–14266; AD 2005–19–01]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 airplanes. This AD requires inspecting the hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic pressure tubes. This AD results from failure of a hydraulic system due to leakage of hydraulic fluid from a crack in the pipe coming from the pressure side of the engine-driven pump. We are issuing this AD to prevent cracking of the hydraulic pressure pipes, which could result in failure of hydraulic system 1 or 2 or both, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective October 19, 2005.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all EMBRAER Model ERJ 170 airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32544). That NPRM proposed to require inspecting the hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic pressure tubes.

Comments

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

Request To Withdraw NPRM

One commenter, the airplane manufacturer, asserts that hydraulic pressure tubes having the affected serial numbers have been removed from all EMBRAER Model ERJ 170 airplanes. The commenter states that, since issuance of Brazilian airworthiness directive 2004–11–06, dated November 29, 2004, the affected hydraulic pressure tubes have not been installed in production on EMBRAER Model ERJ 170 airplanes. The commenter also states that, as of December 2004, EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004, has been accomplished on the entire worldwide fleet of Model ERJ 170 airplanes. We infer the commenter requests that we withdraw the NPRM.

We do not agree. Even if the worldwide fleet is in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that an affected spare part is not installed on any airplane in the future. The manufacturer has advised us that there are about five affected hydraulic pressure tubes that have not been destroyed or returned to the manufacturer. Issuance of this AD will ensure that an affected spare part is not installed on an airplane at some future time. Therefore, we cannot withdraw the NPRM.

Change to Applicability

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

Change to Service Bulletin Reference

We have revised the note in paragraph (f) of this AD to reference the correct service bulletin name of the secondary source of service information to EMBRAER Service Bulletin 170–29–0001.

Conclusion

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

Costs of Compliance

This AD affects about 27 airplanes of U.S. registry. The inspection takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $1,755, or $65 per airplane.

The replacement, if necessary, takes about 3 work hours per airplane, at an average labor rate of $65 per work hour. Required parts are $0 per airplane. Based on these figures, the estimated cost of the replacement is $195 per airplane, if necessary.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14266. Docket No. FAA–2005–21345; Directorate Identifier 2005–NM–005–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD was prompted by failure of a hydraulic system due to leakage of hydraulic fluid from a crack in the pipe coming from the pressure side of the engine-driven pump. We are issuing this AD to prevent cracking of the hydraulic pressure pipes, which could result in failure of hydraulic system 1 or 2 or both, and consequent reduced controllability of the airplane.

Compliance

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

Inspection and Replacement if Necessary

(f) Within 100 flight hours or 14 days after the effective date of this AD, whichever is first: Inspect the left and right hydraulic pressure tubes at the outlet of the engine-driven hydraulic pumps to determine the part and serial numbers, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004.

(1) If neither hydraulic pressure tube has a serial number as identified in Part I of the service bulletin, then no further action is required by this paragraph.

(2) If only one hydraulic pressure tube has a serial number as identified in Part I of the service bulletin: Within 600 flight hours after the inspection, replace the affected hydraulic pressure tube with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin.

(3) If both hydraulic pressure tubes have serial numbers as identified in Part I of the service bulletin: Before further flight, replace one of the affected hydraulic pressure tubes with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin. Within 600 flight hours after the inspection, replace the other affected hydraulic pressure tube with a new hydraulic pressure tube, in accordance with Part III or Part IV, as applicable, of the service bulletin.

Note 1: EMBRAER Service Bulletin 170–29–0001 refers to Macchi-Hurel Dubois (MHD) Service Bulletin CF34–8E MHD 71–00–011, dated August 3, 2004, as an additional source of service information for inspecting the hydraulic pressure tubes to determine the part and serial numbers; and replacing hydraulic pressure tubes having certain serial numbers with new hydraulic pressure tube as applicable. Macchi-Hurel Dubois (MHD) Service Bulletin CF34–8E MHD 71–00–011 is included in EMBRAER Service Bulletin 170–29–0001.

No Reporting Requirement

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

Parts Installation

(h) As of the effective date of this AD, no person may install a hydraulic pressure pipe having any part and serial numbers identified in Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004, on any airplane.

Alternative Methods of Compliance (AMOCs)

(i) 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.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170–29–0001, dated August 9, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18058 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20406; Directorate Identifier 2002–NM–242–AD; Amendment 39–14270; AD 2005–19–05]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Aerospatiale Model ATR42–500 airplanes. This AD requires inspecting for correct installation of the fastener that attaches the ground braids on the elevator, modifying the forward bonded assembly of the elevator control rod, and corrective action if necessary. This AD results from a functional test of the elevator trim tab control rod of the leading edge, which showed that, in a full-up elevator condition with the tab fully down, interference could occur between the tab control rod and the forward edge of the lower skin of the elevator. We are issuing this AD to prevent discrepancies between the elevator trim tab control rod and the forward edge of the lower skin of the elevator, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

DATES: Effective September 29, 2005.

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

We must receive comments on this AD by November 14, 2005.

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

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

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Aerospatiale Model ATR42–500 airplanes. The DGAC advises that a functional test of the elevator trim tab control rod of the leading edge showed that, in a full-up elevator condition with the tab fully down, interference could occur between the tab control rod and the forward edge of the lower skin of the elevator. The ground point of the elevator interferes with the tab control rod. Additionally, a possible contact between the tab control rod and the clamping of an electrical bonding lead installed on the lower skin of the elevator was found, which was caused by a mislocated fastener. This contact could prevent the elevator from reaching the upper stop and lead to potential tab damage. These conditions, if not corrected, could result in reduced control of the elevator and consequent reduced controllability of the airplane.

Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR42–55–0009, dated July 12, 2002. The service bulletin describes procedures for modifying the forward bonded assembly of the elevator trim tab control rod.

Aerospatiale has also issued Avions de Transport Regional Service Bulletin ATR42–55–0010, Revision 1, dated March 11, 2003. The service bulletin describes procedures for inspecting for correct installation of the fastener that attaches the ground braids on the elevator, and corrective action if necessary. The corrective action includes correctly installing any misaligned attachment fasteners.

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 2002–431(B), dated August 21, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of this AD

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

Therefore, we are issuing this AD to prevent discrepancies between the elevator trim tab control rod and the forward edge of the elevator skin, which could result in reduced control of the elevator and consequent reduced controllability of the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between French Airworthiness Directive and This AD.''

Difference Between French Airworthiness Directive and This AD

The applicability of the French airworthiness directive excludes airplanes that accomplished ATR Service Bulletin ATR42–55–0009 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 that service bulletin. This requirement would ensure that the actions specified in the service bulletin 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. This difference has been coordinated with the DGAC.

Clarification of Inspection Terminology

In this AD, the ''inspection'' specified in the French airworthiness directive and Service Bulletin ATR42–55–0010 is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 20 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $1,300 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–20406; Directorate Identifier 2002–NM–242–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–05 Aerospatiale: Amendment 39–14270. Docket No. FAA–2005–20406; Directorate Identifier 2002–NM–242–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model ATR42–500 airplanes, certificated in any category, that are not modified by ATR Modification 5385.

Unsafe Condition

(d) This AD results from a functional test of the elevator trim tab control rod of the leading edge, which showed that, in a full-up elevator condition with the tab fully down, interference could occur between the tab control rod and the forward edge of the lower skin of the elevator. The FAA is issuing this AD to prevent discrepancies between the elevator trim tab control rod and the forward edge of the lower skin of the elevator, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

Compliance

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

Inspection/Modification

(f) Within 48 months after the effective date of this AD: Do the actions required by paragraphs (f)(1) and (f)(2) of this AD.

(1) Modify the forward bonded assembly of the control rod in accordance with Avions de Transport Regional Service Bulletin ATR42–55–0009, dated July 12, 2002.

(2) Perform a detailed inspection for correct installation of the fastener that attaches the ground braids on the elevator, in accordance with Avions de Transport Regional Service Bulletin ATR42–55–0010,

Revision 1, dated March 11, 2003. Correct any discrepancies before further flight in accordance with the service bulletin. Inspections and corrective action done before the effective date of this AD in accordance with Avions de Transport Regional Service Bulletin ATR42–55–0010, dated July 12, 2002, are acceptable for compliance with this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Alternative Methods of Compliance (AMOCs)

(g) 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

(h) French airworthiness directive 2002–431(B), dated August 21, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Avions de Transport Regional Service Bulletin ATR42–55–0009, dated July 12, 2002; and Avions de Transport Regional Service Bulletin ATR42–55–0010, Revision 1, dated March 11, 2003; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. Avions de Transport Regional Service Bulletin ATR42–55–0010, Revision 1, dated March 11, 2003, includes the following list of effective pages:

LIST OF EFFECTIVE PAGES

Page No.	Revision level shown on page	Date shown on page
1, 2, 4–13 ..	1	March 11, 2003.
3	Original	July 12, 2002.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18061 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20405; Directorate Identifier 2002–NM–243–AD; Amendment 39–14269; AD 2005–19–04]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A340–200 and –300 series airplanes. This AD requires revising the airplane flight manual to incorporate new procedures for the flightcrew to follow to correct miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight under certain conditions. This AD results from a report that a software error could result in a miscalculation (underestimation) of the runway length necessary for takeoff in the case of a ferry flight with one engine not operating. We are issuing this AD to prevent this miscalculation, which, if combined with high takeoff weight, too-short runway length, and high altitude and temperature of the airport, could result in inability of the flightcrew to abort the takeoff in a safe manner, reduced controllability of the airplane, and runway overrun.

DATES: Effective September 29, 2005.

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

We must receive comments on this AD by November 14, 2005.

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

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

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

FOR FURTHER INFORMATION CONTACT: 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:

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 A340–200 and –300 series airplanes. The DGAC advises that, during certification of Airbus Model A340–600 series airplanes, an error in the Octopus software was discovered. The software error results in a miscalculation (underestimation) of the runway length necessary for takeoff in the case of a ferry flight with one engine not operating. In this situation, the takeoff procedure requires a progressive power setting of the engine symmetrical to the failed or non-operational engine. Investigation revealed that the calculations performed by the software give the same thrusts in the transient system for the three operational engines, resulting in an error in calculation of 650 meters (2,133 feet) for the takeoff and accelerate/stop distance. This condition, if combined with high takeoff weight, too-short runway length, and high altitude and temperature of the airport, could result in inability of the flightcrew to abort the takeoff in a safe manner, reduced controllability of the airplane, and runway overrun.

Relevant Service Information

Airbus has issued Temporary Revision (TR) 6.03.02/05, dated August 8, 2002, to the A340 Airplane Flight Manual (AFM). The TR describes procedures for revising the limitations section (appendices and supplements) of the AFM to provide procedures for the flightcrew to follow to correct

miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight with one engine not operating. The DGAC mandated the TR and issued French airworthiness directive 2002–436(B), dated August 21, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to prevent miscalculation of the takeoff and accelerating or stopping distance of the airplane during ferry flight takeoff performance. This miscalculation, if combined with high takeoff weight, too-short runway length, and high altitude and temperature of the airport, could result in inability of the flightcrew to abort the takeoff in a safe manner, reduced controllability of the airplane, and runway overrun. This AD requires revising the AFM to incorporate new procedures for the flightcrew to follow to correct miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight under certain conditions.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required AFM revision would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $65 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–20405; Directorate Identifier 2002–NM–243–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–04 Airbus: Amendment 39–14269. Docket No. FAA–2005–20405; Directorate Identifier 2002–NM–243–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A340–211, –212, and –213, and Model A340–311, –312, and –313 airplanes, certificated in any category; modified by Airbus modification 40647.

Unsafe Condition

(d) This AD results from a report that a software error could result in a miscalculation (underestimation) of the runway length necessary for takeoff in the case of a ferry flight with one engine not operating. The FAA is issuing this AD to prevent this miscalculation, which, if combined with high takeoff weight, too-short runway length, and high altitude and temperature of the airport, could result in inability of the flightcrew to abort the takeoff in a safe manner, reduced controllability of the airplane, and runway overrun.

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.

Airplane Flight Manual (AFM) Revision

(f) Within 10 days after the effective date of this AD: Revise the Limitations section of the Airbus A340 AFM to include the information in Airbus Temporary Revision (TR) 6.03.02/05, dated August 8, 2002, as specified in the TR. The TR includes procedures for the flightcrew to follow to correct miscalculation of the takeoff and accelerating or stopping distance of the airplane during a ferry flight with one engine not operating.

Note 1: This may be done by inserting a copy of Airbus TR 6.03.02/05 in the AFM. When the TR has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM provided the relevant information in the general revision is identical to that in Airbus TR 6.03.02/05.

Alternative Methods of Compliance (AMOCs)

(g) 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

(h) French airworthiness directive 2002–436(B), dated August 21, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Temporary Revision 6.03.02/05, dated August 8, 2002, to the Airbus A340 Airplane Flight Manual, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18060 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19750; Directorate Identifier 2003–NM–192–AD; Amendment 39–14264; AD 2005–18–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. That AD currently requires either determining exposure to runway deicing fluids containing potassium formate, or performing repetitive inspections of certain electrical connectors in the wheel well of the main landing gear (MLG) for corrosion, and follow-on actions. This new AD adds a new inspection requirement and related corrective actions. This AD is prompted by additional reports indicating that significant corrosion of the electrical connectors in the wheel well of the MLG has also been found on airplanes that land on runways treated with deicing fluids containing potassium acetate. We are issuing this AD to prevent corrosion and subsequent moisture ingress into the electrical connectors, which could result in an electrical short and consequent incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane, including fire warning systems.

DATES: This AD becomes effective October 19, 2005.

The incorporation by reference of Boeing Alert Service Bulletin 737–24A1148, Revision 1, dated July 10, 2003; as listed in the AD; is approved by the Director of the Federal Register as of October 19, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19750; the directorate identifier for this docket is 2003–NM–192–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2002–16–03, amendment 39–12842 (67 FR 52396, August 12, 2002). The existing AD applies to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The proposed AD was published in the **Federal Register** on December 1, 2004 (69 FR 69832), to require either determining exposure to runway deicing fluids containing potassium formate or performing repetitive inspections of certain electrical connectors in the wheel well of the main landing gear (MLG) for corrosion, and follow-on actions.

Comments

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

Requests for Credit/Extension of Compliance Time for Previous Inspections

Three commenters ask that the proposed AD be changed to allow credit for the repetitive inspections being accomplished per the existing AD. The first commenter states that it has been in compliance with the existing AD by performing the repetitive inspections of the electrical connectors, as specified in paragraph (f)(1)(ii) of the proposed AD, every 12 calendar months. The commenter notes that it chose to perform this inspection instead of determining exposure to runway deicing fluids containing potassium formate because it cannot establish whether airplanes that fly into unfamiliar airports have been exposed. The commenter adds that, based on the current language in the proposed AD, all of its airplanes would have to be re-inspected before further flight if exposed to potassium formate. The commenter states that there is no safety-of-flight issue if the airplane is already being repetitively inspected per the existing AD; therefore, operations should be continued as long as the requirements in paragraph (f)(2) of the proposed AD (i.e., repetitive detailed inspections and follow-on actions) are met. The commenter concludes that airplanes on which the inspections have been performed in the last 12 months before issuance of the proposed AD should be exempt from performing another inspection before further flight.

The second commenter states that the proposed AD does not clearly give credit for previous compliance with the existing AD.

The third commenter asks that, if the FAA proceeds with issuance of the proposed AD, all aircraft that have previously complied with the existing AD via detailed inspection of the electrical connectors, or per an approved alternative method of compliance (AMOC), not be required to perform the inspection for at least 12 months after performing the last inspection required by the existing AD.

We agree that the commenters should get credit for the detailed inspections accomplished per the original issue of the service bulletin (which was referenced in the existing AD as the appropriate source of service information for accomplishing the detailed inspections of the electrical connectors). We have added a new paragraph (g) to this final rule to give such credit. Additionally, we have changed the final rule to specify that operators are allowed to do the actions specified in either paragraph (f)(1) or (f)(2) of the final rule at intervals not to exceed 12 months, regardless of airplane exposure. However, we have changed the compliance time for accomplishing the detailed inspection for airplanes that have been exposed to potassium formate or potassium acetate to 90 days after that determination is made (and thereafter at intervals not to exceed 12 months). The proposed AD specified accomplishing the detailed inspection before further flight for airplanes that have been exposed to potassium formate or potassium acetate, but we have added a 90-day grace period before the detailed inspection on those airplanes must be accomplished. We have determined that accomplishing the detailed inspection within 90 days represents an acceptable interval of time wherein affected airplanes may be allowed to operate without jeopardizing safety.

One commenter notes that paragraph (f)(1)(ii) of the proposed AD requires performing the inspection required by paragraph (f)(2) of the proposed AD before further flight, and that this compliance time is troublesome. The commenter states that it would ground some airplanes upon the effective date of the AD until the detailed inspection is accomplished. The commenter adds that operators have not previously been required to determine airplane exposure to potassium acetate, and no time is given to make such a determination in the proposed AD. The commenter states that this is further complicated by the fact that credit should be given for compliance with the existing AD.

A second commenter states that, in order to comply with paragraph (f)(1) of the proposed AD, it would be necessary to have written evidence of the runway cleaning assessment from airport management when deicing fluids are used due to meteorological events. The commenter adds that to perform the inspection required by paragraph (f)(2) before further flight is very restrictive if the flight is made with intermediate legs, which could cause delays. The commenter notes that it would be better to have more time to accomplish this inspection.

A third commenter states that its partner airline must obtain a change or an AMOC to paragraph (f)(1)(ii), described previously. The commenter states that, if its partner airline cannot get the compliance time extended to 6 months or so, it will be required to do the 8-hour inspection on the same day they determine exposure, which will ground those airplanes until the inspection is done.

We partially agree with the commenters. We have already extended the compliance time for accomplishing the initial detailed inspection of airplanes that have been exposed to potassium formate or potassium acetate to 90 days, as specified above. Additionally, operators may incorporate a repetitive inspection program in lieu of determining exposure to runway deicing fluids; therefore, it is not necessary for us to obtain written evidence of the runway cleaning assessment from airport management. We have made no change to the final rule in this regard.

One commenter states that paragraph (f)(2) of the proposed AD requires operators to perform an airplane exposure review every 12 months, per paragraph (f)(1) of the proposed AD. The commenter adds that this yearly review should not be required for operators that choose to inspect their airplanes every 12 months, regardless of airplane exposure. The commenter asks that the last sentence of paragraph (f)(2) be changed to read ''Repeat the actions required by paragraph (f)(1) or (f)(2) of this AD thereafter at intervals not to exceed 12 months.''

We agree with the commenter. However, we have removed the repetitive interval specified in paragraph (f)(2) of the proposed AD and added the repetitive interval to paragraph (f) of this final rule. By adding the repetitive interval to the main paragraph, the actions for both paragraphs (f)(1) and (f)(2) of the final rule are covered. Paragraphs (f)(1)(i) and (f)(1)(ii) of the proposed AD identify airplanes that have not, and have, respectively, been exposed to potassium formate or potassium acetate.

Request To Extend Repetitive Inspection Interval

Two commenters ask that the repetitive inspection interval specified in the proposed AD be extended.

One commenter states that it has completed three series of inspections per the existing AD, and at the time of its last inspection, its fleet had accumulated over 691,000 flight hours and 369,000 flight cycles with no findings. The commenter states that the manufacturer provided no technical objection to its request to extend the repetitive inspection interval in the existing AD from 12 to 24 months. The commenter asks that the repetitive inspection interval specified in the proposed AD be extended to 24 months.

The second commenter states that the manufacturer has determined that the amount of corrosion to be expected is dependent on the number of landings on runways where potassium-based deicing fluids are used. The commenter notes that not all operators have the

same quantity of flights to affected runways, yet, as proposed, operators with little exposure are subject to the same restrictive interval as operators in highly exposed regions. The commenter operates the majority of the affected 737NG (next generation) airplanes with flights mostly on eastern, western, and southern routes, and there is little exposure to deicing fluids on these routes; although the possibility of some exposure exists. The commenter asks that the repetitive interval be 12 months for airplanes with high exposure, and extended to 24 months for airplanes with medium exposure, and 36 months for airplanes with limited exposure.

We do not agree with the commenters' requests. We have not received any verification showing that the amount of corrosion on the connectors can last through two winters (24 months) without affecting safety of flight, or that airplanes with limited exposure can resist corrosion for longer periods of time when exposed to deicing fluids containing potassium formate and potassium acetate. In addition, no technical justification was provided that verifies extending the repetitive inspection interval will still maintain an appropriate level of safety. In developing an appropriate compliance time for this proposed AD, we considered safety issues as well as the recommendations of the manufacturer and the practical aspects of accomplishing the required inspections within an interval of time that corresponds to the normal maintenance schedules of most affected operators. We do not find it necessary to change this final rule in this regard.

Request for Information/Clarification for Determining Airplane Exposure

Two commenters ask that the phrase ''determine airplane exposure,'' as specified in the proposed AD, be further clarified.

One commenter notes that the proposed AD would require either determining exposure to runway deicing fluids containing potassium formate or potassium acetate, or performing repetitive inspections of certain electrical connectors. The commenter states that affected operators have no authority or control over airports, but the FAA has the authority to require airports to provide the information that would be necessary for determination of airplane exposure. The commenter cites Title 14, Aeronautical and Space, Part 139—Certification of Airports—Subpart D—Operations, Federal Aviation Regulation (FAR) 139.310(c), Records, and FAR 139.313(a), Snow and Ice Control, and adds that snow and ice control plans for most U.S. airports are authorized by the FAA. The commenter asks that the data necessary to make this determination be provided to all affected operators by the FAA.

Another commenter states that it would be very helpful if the FAA would provide a written definition of what constitutes airplane exposure. The commenter states that information it received from the FAA in late 2002 defined exposure as ''Landing at or taking off from an airport where subject runway deicing fluid or pelletized solid had been applied anytime during the previous 365 days.'' The commenter believes, ''as most of the airline industry does,'' that this is far too broad an exposure window since the applied fluid will wash away, or will dry up and blow away, within a week or so after application. The commenter adds that testing of the pelletized forms of the subject deicers has shown to be less corrosive to airplanes.

We partially agree with the commenters. The Airport Safety and Operations Division (AAS–300) of the FAA issued CertAlerts No. 01–04 and No. 02–02 to instruct airport operators to inform and coordinate the use of such chemicals with air carriers. The CertAlerts state that the airplane operators may contact airport operators to obtain information about deicing materials used on runways. We have made no change to the final rule in this regard.

Request To Include Related Service Information

One commenter states that, since Boeing Service Bulletin 737–24–1149, Revision 2, dated August 14, 2003, also addresses corrosion protection of the electrical connectors in the main wheel well, and those connectors are specified in the service information referenced in the proposed AD, that service bulletin should be required in the final rule. The commenter adds that granular potassium nitrate is a commonly used deicing product on airport ramp and gate areas; when this product dissolves into a solution by the melted ice and snow, it could splatter into the wheel well areas during taxi and takeoff.

We do not agree with the commenter's request. The commenter did not provide supporting data regarding the effects of granular potassium nitrate. We have determined that further delay of this final rule is not appropriate; however, we are planning to review Boeing Service Bulletin 737–24–1149 and may then consider further rulemaking action on the issue of deicing. We have made no change to the final rule in this regard.

Request To Change Costs of Compliance Section

Several commenters ask that the work hours and cost specified in the ''Costs of Compliance'' section be changed.

The first commenter states that it estimates the time to accomplish the actions at 5 work hours; this adds aircraft out-of-service costs to the labor and materials estimated in the proposed AD. The commenter adds that, for a limited-exposure operator, the added out-of-service costs are not warranted, and additional operational costs to the airlines in this economic environment, based on the most exposed operator condition, adds an undue burden on the industry.

The second commenter states that the estimated cost for the determination of airplane exposure is a poor labor cost estimate. The commenter adds that the estimate in the proposed AD is based on the number of airplanes operated and not on the number of airports being used by affected operators; the location and number of airports utilized by affected operators also need to be considered to more accurately determine the costs. The commenter notes that no estimated costs are specified for the required repetitive detailed inspections and any necessary corrective actions that will be required on a percentage of affected airplanes. The commenter gives an example, based on its experience, of labor costs for the inspection, corrective actions, parts cost for new connectors, cost for corrosion-inhibiting compound, and parts cost for consumables utilized during maintenance.

The third commenter estimates that it takes at least 8 elapsed work hours and 24 work hours per airplane to comply with the actions in both the proposed and existing AD. The commenter adds that the proposed AD is presently costing over $230,000 annually for its 139 affected airplanes, and not the $9,035 annual total specified in the proposed AD.

We partially agree with the commenters.

We agree that the cost for the detailed inspection should be added to the final rule because we have changed the actions in the final rule to give operators the option of performing either the determination of exposure or the detailed inspection of the electrical connectors. The ''Costs of Compliance'' section has been changed accordingly.

We do not agree to add to the final rule the cost for estimated time or for corrective actions if any discrepancy is found. The actions in this final rule reflect only the direct costs of the

specific required actions based on the best data available from the manufacturer. We recognize that operators may incur incidental costs (such as the time for planning, access and close, and associated administrative actions) in addition to the direct costs. The cost analysis in ADs, however, typically does not include incidental costs or the cost for on-condition corrective actions. The compliance times in this AD should allow ample time for operators to do the required actions at the same time as scheduled major airplane inspection and maintenance activities, which would reduce the additional time and costs associated with special scheduling.

Additionally, we do not agree that the location and number of airports utilized should be considered to more accurately determine the costs. The operational cost of airports utilized may vary significantly from operator to operator; therefore, individual costs for the location and number of airports utilized is almost impossible to calculate.

Request for Credit for AMOCs Approved for Existing AD

Two commenters ask that previously issued AMOCs for the existing AD continue to be approved for the proposed AD.

The first commenter asks that two specific approved AMOCs be acceptable for compliance with the proposed AD. One AMOC extended the compliance time to 90 days for accomplishing the procedures described in paragraphs (a)(1)(i) and (b) of the existing AD (which are not restated in the proposed AD). The other AMOC defined an acceptable corrosion area as 10% of the total area of the backshell of the connectors. The commenter adds that the second AMOC also allows connector replacement when the total amount of corrosion is between 10% and 30%. The commenter recommends that these AMOCs remain valid.

The second commenter notes that it is already in compliance with the proposed AD and requires no change in its current method of compliance. The commenter adds that it was granted six AMOC approvals by the Seattle Aircraft Certification Office for accomplishing the existing AD's annual repetitive inspections (which currently are required on 139 airplanes). The commenter states that there should be no technical or operational reason that existing AMOCs cannot be applied to the proposed AD, because Revision 1 of the service bulletin, which was referenced in the proposed AD as the appropriate source of service information for accomplishing the actions, contains the same actions as the original issue. The commenter concludes that, if necessary, it will re-submit the original and approved AMOC request letters to the FAA requesting the same or parallel AMOCs for the proposed AD.

We do not agree with the commenters' requests. As specified in the proposed AD, AMOCs approved previously in accordance with AD 2002–16–03, amendment 39–12842, are not approved as AMOCs with this AD because of the addition of a new requirement to determine airplane exposure to potassium acetate. Additionally, although certain AMOCs extended the compliance time for corrective actions, the corrective actions are normally performed before further flight, so that the extension was an exception to normal procedures. The actions in this final rule have been changed, as stated previously, to allow 12 months for repeating either the determination of airplane exposure or the detailed inspection of the electrical connectors, as well as to allow 90 days to perform the detailed inspection for airplanes that have been exposed to potassium formate and/or potassium acetate. However, any additional corrective actions must be performed before further flight. The approval for replacement of the connectors if the area of corrosion is greater than ten percent of the total backshell surface area has been incorporated into the revised service information referenced in this final rule. We have made no change to the final rule in this regard.

Request To Change Certain Requirements

One commenter reiterates the requirements in paragraph (f)(2) of the proposed AD and states that this paragraph would require all affected airplanes that were not inspected per Part 1, but were inspected per Part 2, of the original issue of Boeing Service Bulletin 737–24A1148 (referenced in the existing AD for accomplishing certain actions), to be re-inspected per Part 1 of Revision 1 of the service bulletin, because of the wording ''by doing all the actions.'' The commenter adds that, since airplanes that were inspected per Part 2 of the original issue meet the full intent of the existing AD, the requirement to accomplish Part 1 of Revision 1 should not be mandated.

We agree with the commenter. The intent of this final rule is essentially the same as that of the existing AD, but the proposed AD adds an inspection for potassium acetate. The requirements in this AD are based on the latest information provided by the manufacturer; therefore, the Accomplishment Instructions of Revision 1 of the service bulletin should be followed. As stated previously, we have added a credit paragraph for inspections already done per the existing AD using the original issue of the service bulletin, and that when the inspections are repeated, Revision 1 of the service bulletin must be used.

Request To Provide Terminating Action

Several commenters ask that a terminating action for the repetitive inspections specified in the proposed AD be developed.

One commenter states that operators need the manufacturer and the FAA to aggressively address the development of a terminating action for the repetitive inspections. The commenter adds that, because there have been no electrical connector problems, as well as limited and declining corrosion findings fleet-wide during two annual inspections, it formally requested from the manufacturer that it extend the repetitive inspection interval from 12 to 18 or 24 months, during the time they are developing a terminating action for the proposed AD. The commenter is awaiting new information from the manufacturer regarding newly designed thrust reverser (TR) cascades and electrical connectors made of improved stainless steel and anodized aluminum, which would be installed in all ten positions. The commenter suggests that the combination of installing improved TR cascades, replacing the existing connectors with new connectors, and applying corrosion inhibiting compound, by following the new service information to be issued by the manufacturer (depending on FAA analysis and acceptance) be designated as a terminating action for the repetitive inspections. The commenter adds that the cost for the terminating action could be considerable, but if this action terminates the repetitive inspections, it would save the commenter over $230,000 annually, as the present cost for the inspection is about $3.3 million.

The second commenter states that the manufacturer is collecting data from operators to propose a more convenient maintenance interval for the mandated inspections. The commenter asks that the FAA consider both a maintenance interval based on operations on affected runways, and possible terminating action, prior to publishing the final rule.

We agree that a terminating action for the repetitive inspections would benefit operators. The airplane manufacturer is currently developing a terminating action. Once the proposed terminating action has been submitted to us for

review, and we have approved the proposed action as terminating action for the requirements of the AD, anyone may apply for approval to use that terminating action as an AMOC under the provisions of paragraph (h)(1) of this final rule.

The third commenter states that terminating action is possible and requests that the FAA implement all of the following solutions. The FAA's response follows each comment.

• Withdraw the proposed AD.

We do not agree that we should withdraw the proposed AD until a terminating action is developed. We do not consider it appropriate to delay the issuance of this final rule in light of the identified unsafe condition. Additionally, we do not have any technical justification to withdraw the proposed AD, and the repetitive inspections are required for continued safe flight of the airplane. Therefore, we have made no change to the final rule in this regard.

• Determine changes that need to be made to the specifications for deicing materials used at airports under FAA authority and control to eliminate the subject corrosion. Ensure adequate improvements are made to the deicing material specifications, and then mandate to airports under FAA authority and control that only these improved deicing materials be used as part of FAA-authorized snow and ice removal plans under FAA regulations.

The specifications for deicing fluids are determined by the Society of Automotive Engineers (SAE) G–12 Aircraft Ground Deicing Fluids Subcommittee, and the FAA enforces those deicing specifications under FAA regulations. We are working with the SAE subcommittee (we participate in this committee) to ensure that adequate improvements are made to the deicing material specifications.

• Direct Boeing to determine which design changes need to be made to the 737NG airplanes in order to eliminate unique susceptibility to the corrosive effects of runway deicing materials. Promulgate an AD requiring incorporation of the design changes determined to be necessary for the 737NG airplanes, in order to eliminate the subject corrosion problem within its MLG wheel wells.

We have determined that the repetitive inspections required by this final rule will maintain an adequate level of safety for all affected airplanes until a terminating action is developed. As specified previously, the manufacturer is currently developing a terminating action for the repetitive inspections. After terminating action is developed, approved, and available, we may consider further rulemaking action. The terminating action should provide a solution to both the corrosive effects of runway deicing materials and corrosion in the MLG wheel wells.

Request To Address Technical Objection

One commenter states that it has previously objected to the manufacturer and the FAA * * * * and still stands by this objection in principle * * * regarding the unwarranted detailed inspection of the electrical connectors. The commenter notes that the subject inspection is an imprudent practice, since routinely opening cannon-plug connectors on so many airplanes without any indication of problems could create a risk of pushing back or bending connector pins. This would leave a less secure seal that could allow the ingress of moisture in the future.

We infer that the commenter wants the requirement for repetitive detailed inspections removed from the final rule. As explained in the preamble of the proposed AD, we have received reports of significant corrosion of the electrical connectors located in the wheel well of the MLG on Model 737 series airplanes that land on runways treated with deicing fluids containing potassium acetate. We have determined that the detailed inspections required by the existing AD do not account for exposure to deicing fluids containing potassium acetate. Therefore, we find that repetitive detailed inspections are necessary to prevent corrosion and subsequent moisture ingress into the electrical connectors, which could result in an electrical short and consequent incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane, including fire warning systems. We have made no change to the final rule in this regard.

Conclusion

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

Costs of Compliance

This AD affects about 587 airplanes of U.S. registry.

The new determination of airplane exposure takes about 1work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the determination of airplane exposure specified in this AD for U.S. operators is $38,155, or $65 per airplane, per cycle.

The detailed inspection takes about 1work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the detailed inspection specified in this AD for U.S. operators is $65 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12842 (67 FR 52396, August 12, 2002), and by adding the following new airworthiness directive (AD):

2005–18–23 Boeing: Amendment 39–14264. Docket No. FAA–2004–19750; Directorate Identifier 2003–NM–192–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2002–16–03, amendment 39–12842.

Applicability: (c) This AD applies to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category.

Unsafe Condition

(d) This AD was prompted by additional reports indicating that significant corrosion of the electrical connectors in the wheel well of the MLG has also been found on airplanes that land on runways treated with deicing fluids containing potassium acetate. We are issuing this AD to prevent corrosion and subsequent moisture ingress into the electrical connectors, which could result in an electrical short and consequent incorrect functioning of critical airplane systems essential to safe flight and landing of the airplane, including fire warning systems.

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.

Determine Airplane Exposure/Significant & Corrective Actions

(f) Within 12 months after the effective date of this AD: Perform the actions required by either paragraph (f)(1) or (f)(2) of this AD.

(1) Determine airplane exposure to runway deicing fluids containing potassium formate or potassium acetate by reviewing airport data on the type of components in the deicing fluid used at airports that support airplane operations.

(i) If the airplane has not been exposed, repeat the requirements specified in paragraph (f)(1) of this AD thereafter at intervals not to exceed 12 months.

(ii) If the airplane has been exposed, within 90 days after that determination is made, do the inspection required by paragraph (f)(2) of this AD; and repeat the inspection thereafter at intervals not to exceed 12 months.

(2) Do a detailed inspection of the electrical connectors, including the contacts and backshells, of the line replaceable unit (LRU) in the wheel well of the MLG for corrosion by doing all the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–24A1148, Revision 1, dated July 10, 2003. Do any significant/corrective actions before further flight in accordance with the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Inspections Accomplished Previously

(g) Inspections accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–24A1148, dated December 6, 2001, are acceptable for compliance with the inspections required by paragraph (f)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 2002–16–03, amendment 39–12842, are not approved as AMOCs with this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 737–24A1148, Revision 1, dated July 10, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–17984 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Debt Unblocked

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is amending the Iraqi Sanctions Regulations, 31 CFR part 575, to unblock debt in which the Government of Iraq has an interest.

DATES: This rule is effective September 9, 2005.

FOR FURTHER INFORMATION CONTACT: Chief of Policy Planning and Program Management, tel. 202/622–2500, or Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1990, upon Iraq's invasion of Kuwait, the President issued Executive Order 12722 declaring a national emergency with respect to Iraq. This order, issued under the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the U.S. Code, imposed economic sanctions against Iraq, including a complete trade embargo and a freeze of Government of Iraq property and interests in property, including any debt owed by the Government of Iraq (''Iraqi debt''). In keeping with United Nations Security Council Resolution 661 of August 6, 1990, and under the United Nations Participation Act (22 U.S.C. 287c), the President also issued Executive Order 12724 of August 9, 1990, which imposed additional restrictions. The Iraqi Sanctions Regulations, 31 CFR part 575 (the ''Regulations''), implement Executive Orders 12722 and 12724 and are administered by the Treasury Department's Office of Foreign Assets Control (''OFAC'').

On May 22, 2003, the United Nations Security Council adopted Resolution 1483, which substantially lifted the multilateral economic sanctions with respect to Iraq. On July 29, 2004, the President issued Executive Order 13350 terminating the national emergency declared in Executive Order 12722 and revoking Executive Orders 12722 and 12724 and all other Executive orders based on that national emergency. Notwithstanding the termination of the national emergency, this new Executive order, pursuant to the President's authority under section 207 of IEEPA (50 U.S.C. 1706), continues prohibitions with regard to transactions involving any property blocked pursuant to Executive Order 12722 or Executive Order 12724 that remains blocked as of July 30, 2004. Moreover, the new Executive order indicates that the termination ''shall not affect any action taken or proceeding pending but not finally concluded'' as of July 30, 2004, any action or proceeding based on any act committed prior to such date, or ''any rights or duties that had matured or penalties that were incurred'' prior to that date.

Because property blocked as of the termination of sanctions against Iraq remains blocked pursuant to Executive Order 13350, any Iraqi debt blocked pursuant to those sanctions has remained blocked. Because of the lifting of multilateral and U.S. sanctions against Iraq, including the resolution of issues relating to Iraqi debt, the Office of Foreign Assets Control is today issuing a new general license unblocking debt in which the Government of Iraq has an interest, subject to certain conditions.

First, notwithstanding the new general license, transactions that remained prohibited by paragraphs (b)(3) and (b)(5) of 31 CFR 575.533 continue to remain prohibited. Second, the general license does not authorize the purchase, exchange or settlement of debt in which the Government of Iraq has an interest utilizing funds or other property that is blocked pursuant to this part.

Procedural Matters

Because the Iraqi Sanctions Regulations involve a foreign affairs function of the United States, the provisions in the Administrative Procedure Act (5 U.S.C. 553) requiring notice and public procedure and a delayed effective date are inapplicable. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply.

Electronic and Facsimile Availability

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Paperwork Reduction Act

The collections of information related to these regulations can be found in 31 CFR part 501. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Iraq, Penalties, Sanctions.

■ For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 575—IRAQI SANCTIONS REGULATIONS

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317; E.O. 13350, 69 FR 46055, July 29, 2004.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. A new section 575.535 is added to read as follows:

§ 575.535 Iraqi Debt Unblocked.

(a) Except as provided in paragraph (b) of this section, all transactions otherwise prohibited by this part that involve debts in which the Government of Iraq has an interest are authorized.

(b) For purposes of this part:

(1) This section does not authorize transactions that remain prohibited under the terms of paragraphs (b)(3) and (b)(5) of § 575.533 of this part.

(2) This section does not authorize the purchase, exchange or settlement of debt in which the Government of Iraq has an interest utilizing funds or other property that is blocked pursuant to this part.

Dated: September 6, 2005.

Robert W. Werner,

Director, Office of Foreign Assets Control.

Stuart A. Levey,

Under Secretary of the Treasury, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 05–18245 Filed 9–9–05; 12:57 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No.: 2004–P–034]

RIN 0651–AB76

Changes To Implement the Cooperative Research and Technology Enhancement Act of 2004

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Cooperative Research and Technology Enhancement Act of 2004 (CREATE Act) amends the patent laws to provide that subject matter developed by another person shall be treated as owned by the same person or subject to an obligation of assignment to the same person for purposes of determining obviousness if three conditions are met: The claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made; the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement. The United States Patent and Trademark Office (Office) is revising the rules of practice in patent cases to implement the CREATE Act.

DATES: *Effective Date:* September 14, 2005.

Applicability Date: The changes in this final rule apply to any patent granted on or after December 10, 2004.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, or Jeanne M. Clark, Senior Legal Advisors, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7704, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert A. Clarke.

SUPPLEMENTARY INFORMATION: The CREATE Act amends 35 U.S.C. 103(c) to provide that subject matter developed by another person shall be treated as owned by the same person or subject to an obligation of assignment to the same person for purposes of determining obviousness if three conditions are met: (1) The claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made; (2) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and (3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement. *See* Pub. L. 108–453, 118 Stat. 3596 (2004). Section 2 of the CREATE Act specifically amended 35 U.S.C. 103(c) to provide that:

(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

(A) The claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

(B) The claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(C) The application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(3) For purposes of paragraph (2), the term ''joint research agreement'' means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

Section 3 of the CREATE Act provides that its amendments shall apply to any patent (including any reissue patent) granted on or after December 10, 2004. The CREATE Act provides that its amendments shall not affect any final decision of a court or the Office rendered before December 10, 2004, and shall not affect the right of any party in any action pending before the Office or a court on December 10, 2004, to have that party's rights determined on the basis of the provisions of title 35, United States Code, in effect on December 9, 2004. Since the CREATE Act also includes the amendment to 35 U.S.C. 103(c) made by § 4807 of the American Inventors Protection Act of 1999 (*see* Pub. L. 106–113, 113 Stat. 1501, 1501A–591 (1999)), the change of ''subsection (f) or (g)'' to ''one or more of subsections (e), (f), or (g)'' in 35 U.S.C. 103(c) is now also applicable to applications filed prior to November 29, 1999, which were pending on December 10, 2004.

35 U.S.C. 103(c) as amended by the CREATE Act continues to apply only to subject matter which qualifies as prior art under 35 U.S.C. 102(e), (f) or (g), and which is being relied upon in a rejection under 35 U.S.C. 103. If the rejection is anticipation under 35 U.S.C. 102(e), (f), or (g), 35 U.S.C. 103(c) cannot be relied upon to disqualify the subject matter in order to overcome the anticipation rejection.

Because the CREATE Act applies only to patents granted on or after December 10, 2004, the recapture doctrine may prevent the presentation of claims in reissue applications that had been amended or cancelled (*e.g.*, to avoid a rejection under 35 U.S.C. 103(a) based upon subject matter that may now be disqualified under the CREATE Act) during the prosecution of the application which resulted in the patent for which reissue is sought. *See* H.R. Rep. No. 108–425, at 6–7 (2003).

The Office published an interim rule to revise the rules of practice in title 37 of the Code of Federal Regulations (CFR) to implement the CREATE Act. *See Changes to Implement the Cooperative Research and Technology Enhancement Act of 2004*, 70 FR 1818 (Jan. 11, 2005), 1291 *Off. Gaz. Pat. Office* 58 (Feb. 8, 2005) (interim rule). This final rule further revises the rules of practice in title 37, CFR, to implement the CREATE Act.

Discussion of Specific Rules

Section 1.17: Section 1.17(i) is amended in this final rule to add the processing fee required by § 1.71(g)(2) (see the discussion regarding § 1.71(g)(2)).

Section 1.52: Section 1.52(e)(5) is amended in this final rule to change ''§ 1.77(b)(4)'' to ''§ 1.77(b)(5)'' for consistency with the change to § 1.77(b).

Section 1.71: Section 1.71 was amended in the interim rule to add new § 1.71(g). An application must disclose or be amended to disclose the names of the parties to a joint research agreement to invoke the ''safe harbor'' provision of 35 U.S.C. 103(c) as amended by the CREATE Act. *See* 35 U.S.C. 103(c)(2)(C). Section 1.71(g) provides for the situation in which an application discloses or is amended to disclose the names of the parties to a joint research agreement to invoke the ''safe harbor'' provision of 35 U.S.C. 103(c) as amended by the CREATE Act. Section 1.71(g)(1) specifically provides that the specification may disclose or be amended to disclose the name of each party to the joint research agreement because this information is required by 35 U.S.C. 103(c)(2)(C). This final rule eliminates the requirements for: (1) The date the joint research agreement was executed; and (2) a concise statement of the field of the claimed invention.

Section 1.71(g)(2) provides that an amendment under § 1.71(g)(1) must be accompanied by the processing fee set forth in § 1.17(i) if it is not filed within one of the following time periods: (1) Within three months of the filing date of a national application; (2) within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

Section 1.71(g)(3) provides that if an amendment under § 1.71(g)(1) is filed after the date the issue fee is paid, the patent as issued may not necessarily include the names of the parties to the joint research agreement. Section 1.71(g)(3) also provides that if the patent as issued does not include the names of the parties to the joint research agreement, the patent must be corrected to include the names of the parties to the joint research agreement by a certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323 for the amendment to be effective. The requirements of § 1.71(g)(3) (correction of the patent by a certificate of correction under 35 U.S.C. 255 and 37

CFR 1.323) also apply in the situation in which such an amendment is not filed until after the date the patent was granted (in a patent granted on or after December 10, 2004). It is unnecessary to file a reissue application or request for reexamination of the patent to submit the amendment and other information necessary to take advantage of 35 U.S.C. 103(c) as amended by the CREATE Act. *See* H.R. Rep. No. 108–425, at 9 (''[t]he omission of the names of parties to the agreement is not an error that would justify commencement of a reissue or reexamination proceeding'').

Section 1.71(g)(3) is amended in this final rule to eliminate the provision that the processing fee under § 1.17(i) is required if an amendment under § 1.71(g)(1) is submitted after payment of the issue fee. The processing fee under § 1.17(i) is required for an amendment under § 1.71(g)(1) submitted after the time periods set forth in § 1.71(g)(2), even if the amendment under § 1.71(g)(1) is also submitted after payment of the issue fee or after a patent is granted.

The submission of such an amendment remains subject to the rules of practice: *e.g.*, §§ 1.116, 1.121, and 1.312. For example, if an amendment under § 1.71(g) is submitted in an application under final rejection to overcome a rejection under 35 U.S.C. 103(a) based upon a U.S. patent which qualifies as prior art only under 35 U.S.C. 102(e), the examiner may refuse to enter the amendment under § 1.71(g) if it is not accompanied by an appropriate terminal disclaimer (§ 1.321(d)). This is because such an amendment may necessitate the reopening of prosecution (*e.g.*, for entry of a double patenting rejection).

If an amendment under § 1.71(g) is submitted to overcome a rejection under 35 U.S.C. 103(a) based upon a U.S. patent or U.S. patent application publication which qualifies as prior art only under 35 U.S.C. 102(e), and the examiner withdraws the rejection under 35 U.S.C. 103(a), the examiner may need to issue an Office action containing a new double patenting rejection based upon the disqualified patent or patent application publication. In these situations, such Office action can be made final, provided that the examiner introduces no other new ground of rejection that was not necessitated by either amendment or an information disclosure statement filed during the time period set forth in § 1.97(c) with the fee set forth in § 1.17(p). The Office action is properly made final because the new double patenting rejection was necessitated by amendment of the application by applicant. This is the case regardless of whether the claims themselves have been amended.

Section 1.76: Section 1.76(b)(5) is amended in this final rule to change ''§ 1.78(a)(4)'' to ''§ 1.78(a)(5)'' to correct a typographic error.

Section 1.77: Section 1.77 was amended in the interim rule to provide for the names of the parties to a joint research agreement in the preferred arrangement of the specification. No further amendment to § 1.77 is made in this final rule.

Section 1.96: Section 1.96(c) is amended in this final rule to change ''§ 1.77(b)(4)'' to ''§ 1.77(b)(5)'' for consistency with the change to § 1.77(b).

Section 1.104: Section 1.104(c)(4) is amended for consistency with the amendment to 35 U.S.C. 103(c) and to include the requirements for the statement to invoke the prior art disqualification under the CREATE Act. Section 1.104 is also amended to change ''same person or organization'' to ''same person'' for consistency with 35 U.S.C. 103(c) (no change in substance).

Once an examiner has established a *prima facie* case of obviousness under 35 U.S.C. 103(a), the burden is on the applicant to overcome the rejection by invoking 35 U.S.C. 103(c) as amended by the CREATE Act. Such a rejection under 35 U.S.C. 103(a) may be based upon subject matter (whether a patent document, publication, or other evidence) which qualifies as prior art under only one or more of 35 U.S.C. 102(e), (f), or (g). To overcome such a rejection via the CREATE Act, the applicant must provide a statement in compliance with § 1.104(c)(4) to the effect that the prior art and the claimed invention were made by or on the behalf of parties to a joint research agreement, within the meaning of 35 U.S.C. 103(c)(3), which was in effect on or before the date the claimed invention was made, and that the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement. 35 U.S.C. 103(c)(3) defines a ''joint research agreement'' as a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention, that was in effect on or before the date the claimed invention (under examination or reexamination) was made. The statement should either be on or begin on a separate sheet and must not be directed to other matters (§ 1.4(c)). The statement must be signed in accordance with § 1.33(b).

In addition to providing a statement, the applicant must also amend the specification to disclose the names of the parties to the joint research agreement in compliance with § 1.71(g)(1). If the applicant disqualifies the subject matter relied upon by the examiner in accordance with the CREATE Act and the procedures set forth in this final rule, the examiner will treat the application under examination and the 35 U.S.C. 102(e), (f), or (g) prior art as if they are commonly owned for purposes of 35 U.S.C. 103.

Section 1.109: Section 1.109 was added in the interim rule, but is removed and reserved in this final rule. This final rule sets forth guidelines for double patenting rejections based upon a patent or application that is not commonly owned but was disqualified under 35 U.S.C. 103(c) as resulting from activities undertaken within the scope of a joint research agreement and other double patenting rejections in the Manual of Patent Examining Procedure (MPEP) rather than in the rules of practice. MPEP 804 sets forth the Office's guidelines for double patenting rejections.

Congress recognized that this amendment to 35 U.S.C. 103(c) would result in situations in which there would be double patenting between applications not owned by the same party. *See* H.R. Rep. No. 108–425, at 5–6 (2003). Therefore, the Office is providing the following guidelines for double patenting rejections based upon a patent or application that is not commonly owned but was disqualified under 35 U.S.C. 103(c) as resulting from activities undertaken within the scope of a joint research agreement, which will be incorporated into the next revision of the MPEP. A double patenting rejection will be made in an application or patent under reexamination (assuming that the applicant or patentee has not already filed the appropriate terminal disclaimer) if: (1) The application or patent under reexamination claims an invention that is not patentably distinct from an invention claimed in a non-commonly owned application or patent; (2) the application or patent and the non-commonly owned application or patent are by or on behalf of parties to a joint research agreement; and (3) a statement has been filed under § 1.104(c)(4)(iii) to disqualify the non-commonly owned application or patent under 35 U.S.C. 103(c)(2). Thus, the application or patent and the subject matter disqualified under 35 U.S.C. 103(c), as amended by the CREATE Act, will be treated as commonly owned for purposes of double patenting analysis. Such a double patenting rejection will be made regardless of whether the

application or patent and the non-commonly owned patent or application have the same or a different inventive entity. This double patenting rejection may be obviated by filing a terminal disclaimer in accordance with § 1.321(d).

Section 1.130: Section 1.130 was amended in the interim rule to remove and reserve § 1.130(b). No further amendment to § 1.130 is made in this final rule.

Section 1.321: Section 1.321(c) is amended to change ''judicially created double patenting rejection'' to ''judicially created double patenting'' because double patenting may exist regardless of whether a double patenting rejection has been made.

Section 1.321(d) is added to provide the terminal disclaimer requirements for the double patenting situations which arise as a result of the CREATE Act. See H.R. Rep. No. 108–425, at 6 (the Office may require a terminal disclaimer when double patenting is determined to exist for two or more claimed inventions for any application for which the applicant takes advantage of the ''safe harbor'' provision in 35 U.S.C. 103(c) as amended by the CREATE Act). The legislative history of the CREATE Act specifically states that:

> Congress intends that parties who seek to benefit from this Act to waive the right to enforce any patent separately from any earlier patent that would otherwise have formed the basis for an obviousness-type double patenting rejection. Further, Congress intends that parties with an interest in a patent that is granted solely on the basis of the amendments made pursuant to this Act to waive requirements for multiple licenses. In other words, the requirements under current law for parties to terminally disclaim interests in patents that would otherwise be invalid on ''obviousness-type'' double patenting grounds are to apply, *mutatis mutandis*, to the patents that may be issued in circumstances made possible by this Act.

See H.R. Rep. No. 108–425, at 6.

Section 1.321(d) specifically sets forth the requirements for a terminal disclaimer that is filed in a patent application or in a reexamination proceeding to obviate a double patenting based upon a U.S. patent or application that is not commonly owned but was disqualified under 35 U.S.C. 103(c). First, the terminal disclaimer must comply with the provisions of §§ 1.321(b)(2) through (b)(4). Second, the terminal disclaimer must be signed by the applicant in accordance with § 1.321(b)(1) if filed in a patent application, or be signed by the patentee in accordance with § 1.321(a)(1) if filed in a reexamination proceeding. Third, the terminal disclaimer must also include a provision that the owner of the application or patent waives the right to separately enforce any patent granted on that application or any patent subject to the reexamination proceeding and the disqualified patent or any patent granted on the disqualified application, and that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent and the disqualified patent, or any patent granted on the disqualified application are not separately enforced. Section 1.321(d) does not include a provision that the applicant or patentee agrees that such waiver and agreement shall be binding upon the owner of the rejected application or patent, its successors, or assigns because this is provided for in § 1.321(b).

This final rule eliminates the following requirements: (1) That the owner of the disqualified patent or application must sign the terminal disclaimer; (2) that there be a waiver of the right to separately license the application or patent and the disqualified patent or application; and (3) that the agreement that the application or patent and the disqualified patent or application shall be enforceable only during the period that the patent or application and the disqualified patent or application are not separately licensed.

Section 3.11: Section 3.11(c) was added in the interim rule to provide that the Office will record a joint research agreement or an excerpt of a joint research agreement as provided in 37 CFR part 3. Section 3.11(c) as adopted in the interim rule provided that such a joint research agreement, or excerpt of a joint research agreement, must include the name of each party to the joint research agreement, the date the joint research agreement was executed, and a concise statement of the field of invention. This final rule eliminates the requirements that such a joint research agreement, or excerpt of a joint research agreement, include the name of each party to the joint research agreement, the date the joint research agreement was executed, and a concise statement of the field of invention (see discussion of the changes to § 1.71(g) in this final rule). Thus, § 3.11(c) as amended in this final rule simply provides that the Office will record a joint research agreement or an excerpt of a joint research agreement as provided in 37 CFR part 3.

Section 3.31: Section 3.31(g) was added in the interim rule to set forth the requirements for the cover sheet required by § 3.28 seeking to record a joint research agreement or an excerpt of a joint research agreement as provided by § 3.11(c). First, the cover sheet must identify the document as a ''joint research agreement'' (preferably, by checking the joint research agreement checkbox in box 3 of Office form PTO–1595 (March 2005)). Second, the cover sheet must indicate the name of the owner of the application or patent (preferably, in the space provided for the name and address of the party receiving the interest in box 2 of Office form PTO–1595). Third, the cover sheet must indicate the name of every other party to the joint research agreement (preferably, in the space provided for the name of the party conveying the interest in box 1 of Office form PTO–1595). Additional names may be provided on an attached sheet if necessary. Fourth, the cover sheet must indicate the date the joint research agreement was executed (preferably, in the space provided for the execution date in box 3 of Office form PTO–1595). No further amendment to § 3.31 is made in this final rule.

Response to comments: The Office published an interim rule providing changes to the Office's practice for implementing the CREATE Act and requesting public comment on these changes, *See Changes to Implement the Cooperative Research and Technology Enhancement Act of 2004*, 70 FR at 1818, 1291 *Off. Gaz. Pat. Office* at 59. The Office received twenty-four written comments (from intellectual property organizations, patent practitioners, and the general public) in response to this interim rule. The comments and the Office's responses to the comments follow:

Comment 1: Several comments suggested that the effective date provisions of the CREATE Act did not alter the effective date of the amendments to 35 U.S.C. 103(c) by the American Inventors Protection Act of 1999 (AIPA) (*see* Pub. L. 106–113, 113 Stat. 1501, 1501A–591 (1999)). Accordingly, the comments argued that only applications filed on or after November 29, 1999 (the effective date of the AIPA amendments to 35 U.S.C. 103(c)) can disqualify 102(e) prior art used in a rejection under 35 U.S.C. 103(c) based on common ownership.

Response: The Office's interpretation is based on the plain language of the Act. Section 3 of the CREATE Act provides that ''[t]he amendments made by this Act shall apply to any patent granted on or after the date of enactment of this Act.'' The CREATE Act rewrote 35 U.S.C. 103(c) in its entirety and included the amendment to 35 U.S.C. 103(c) made by § 4807 of the American Inventors Protection Act of 1999. The

legislative history of the CREATE Act does not elaborate further on this issue. The comments do not provide any authority for any alternative interpretation. Accordingly, the effective date provision of the CREATE Act applies to 35 U.S.C. 103(c) in its entirety.

In addition, the alternative interpretation presented by the comments would lead to an anomalous application of the prior art exclusion under 35 U.S.C. 103(c), in that in applications filed prior to November 29, 1999, but pending on or after December 10, 2004, prior art available under only 35 U.S.C. 102(e) could not be excluded by common owners under 35 U.S.C. 103(c), but could be excluded by parties to a joint research agreement under 35 U.S.C. 103(c)(2).

In any event, applicants currently still have the option of refiling any pending application that was filed before November 29, 1999, to avoid any possible challenge to the application of the AIPA amendments to 35 U.S.C. 103(c) to their application.

Comment 2: One comment expressed disagreement with the Office's position that the recapture doctrine may prevent the presentation of claims in reissue applications that had been amended or cancelled (*e.g.*, to avoid a rejection under 35 U.S.C. 103(a) based upon subject matter that may now be disqualified under the CREATE Act) during the prosecution of the application which resulted in the patent being reissued.

Response: The statement concerning the recapture doctrine in the interim rule is simply a restatement of what is stated in the legislative history of the CREATE Act concerning the recapture doctrine. *See* H.R. Rep. No. 108–425, at 6–7 (2003).

Comment 3: Several comments suggested that the requirements for the statement to invoke the prior art exclusion under the CREATE Act should be put into a regulation. In addition, the comments objected to the requirement that the applicant or the assignee must sign the statement. Furthermore, the comments expressed concern over filing a statement that might be perceived as making an admission that the disqualified reference is ''prior art.''

Response: The requirements for the statement have been placed into § 1.104(c)(4), and the requirement for signature for the statement is now the same as for any other correspondence as set forth in § 1.33(b). Therefore, a registered practitioner will be allowed to sign the statement in accordance with § 1.33.

With respect to the use of the term ''prior art'' in the statement, it is noted that 35 U.S.C. 103(c)(1) uses the term ''prior art'' in its first sentence. Thus, § 1.104(c)(4) uses terminology consistent with 35 U.S.C. 103(c)(1).

Comment 4: Several comments questioned whether an interim rule was necessary or justified to implement the CREATE Act. The comments suggested that the statutory language was clear and there was no need to implement regulations.

Response: The Office believes that implementing regulations were necessary, for example, to: (1) Advise applicants on how to amend an application to name the parties to a joint research agreement; (2) permit a terminal disclaimer by a party who does not also own the application or patent forming the basis of the double patenting rejection; and (3) provide for the recordation of a joint research agreement in the Office's assignment records.

Comment 5: Several comments were critical of the requirements of § 1.71(g)(1) as added in the interim rule. Some comments stated that the requirements are unnecessarily complicated and suggested deleting those not required by statute. Other comments requested clarification of the requirements or suggested alternative requirements.

Response: Section 1.71(g)(1) has been amended to require only the names of the parties to the joint research agreement, which is required by 35 U.S.C. 103(c)(2)(C). Comments pertaining to requirements not recited in the statute (*e.g.*, the execution date or the concise statement of the claimed invention) are moot in view of the amendment to § 1.71(g)(1) in this final rule.

Comment 6: Several comments requested the definition of terms such as ''joint research agreement,'' ''execution date,'' ''invention made,'' and ''not patently distinct.''

Response: The term ''joint research agreement'' is defined in 35 U.S.C. 103(c)(3) and is further discussed in the legislative history of the CREATE Act. The term ''execution date'' is no longer used in § 1.71(g)(1), and therefore, there is no need to define it in the rules of practice. The terms ''invention made'' and ''not patently distinct'' are defined by case law. *See e.g., In re Katz.,* 687 F.2d 450, 215 USPQ 14 (CCPA 1982) (''invention made''); and *In re Bratt,* 937 F.2d 589, 19 USPQ2d 1289 (Fed. Cir. 1991) (''not patently distinct'') and *In re Longi,* 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985) (same). Accordingly, there is no need to provide explicit definitions for these terms in this final rule.

Comment 7: One comment requested that the Office impose a requirement that a party invoking the CREATE Act prior art exclusion must notify the other parties to the joint research agreement prior to invoking the prior art exclusion. In addition, the comment also requested a requirement that parties to a joint research agreement be disclosed in the disqualified reference.

Response: A requirement that a party invoking the CREATE Act prior art exclusion must notify the other parties to the joint research agreement prior to invoking the prior art exclusion is a requirement that could be a part of the joint research agreement if it is desired by one or more parties to the joint research agreement. This type of requirement is better dealt with during the bargaining stage between the parties to the joint research agreement. In addition, 35 U.S.C. 103(c)(2) does not include such a requirement to invoke the prior art exclusion. Likewise, the requirement that the parties to the joint research agreement be named in the disqualified reference could also be set forth in the joint research agreement if desired. Furthermore, 35 U.S.C. 103(c)(2) does not require that the parties to the joint research agreement be disclosed in the disqualified reference.

Comment 8: One comment requested that the Office impose a requirement that the joint research agreement must be disclosed in the specification prior to a patent issuing to invoke the CREATE Act prior art exclusion. The comment stated such a change is necessary to allow a competitor to easily know whether the patentee can disqualify prior art that the competitor may use to support an invalidity defense.

Response: This comment goes against the great weight of the comments submitted and is not adopted. In addition, 35 U.S.C. 103(c)(2) does not require entry into the specification prior to a patent issuing in order to invoke the prior art exclusion under the CREATE Act.

Comment 9: Several comments suggested that the processing fee required by § 1.71(g)(2) is unnecessary. The comments requested that the fee be eliminated, or alternatively, that the time period for invoking the CREATE Act exclusion without a fee be extended until after the first time a rejection using prior art owned by a party to the joint research agreement is applied.

Response: The processing fee required by § 1.71(g)(2) furthers the Office's compact prosecution goals by encouraging applicants to disqualify

prior art under the CREATE Act before examination begins. The processing fee helps recover the cost of any additional work that may be required by applicant's failure to notify the Office of prior art that could have been disqualified before the examination process has begun.

Comment 10: Several comments requested that § 1.71(g)(3) be rewritten to be more consistent with the requirements of § 1.71(g)(1).

Response: The requirements in § 1.71(g)(3) are consistent with the requirements of § 1.71(g)(1) because of the amendments made to § 1.71(g)(1) in this final rule.

Comment 11: Several comments suggested § 1.71(g)(3) should be rewritten to be more clear by stating this rule is ''notwithstanding § 1.312'' and by stating that a certificate of correction is effective upon submission as opposed to when it is granted.

Response: Section 1.71(g)(3) is not in conflict with § 1.312. Section 1.312 does not allow for amendments filed after payment of the issue fee, and § 1.71(g)(3) does not provide that an amendment under § 1.71(g)(1) submitted after payment of the issue fee will be entered. Rather, § 1.71(g)(3) advises applicants that the patent as issued may not necessarily include the names of the parties to the joint research agreement if an amendment under § 1.71(g)(1) is submitted after payment of the issue fee (because the rules of practice do not permit an amendment to an application after payment of the issue fee), and that if the patent as issued does not include the names of the parties to the joint research agreement, the patent must be corrected to include the names of the parties to the joint research agreement by a certificate of correction under 35 U.S.C. 255 and § 1.323 for the amendment to be effective.

The request to revise the rule to include the statement that the certificate of correction is effective upon submission would not be consistent with the case law concerning certificates of correction. *See, e.g., Southwest Software, Inc.* v. *Harlequin Inc.,* 226 F.3d 1280, 56 USPQ2d 1161 (Fed. Cir. 2000).

Comment 12: One comment requested clarification concerning when an examiner can make an obvious double patenting rejection final if there are common inventors or assignees.

Response: If an amendment under § 1.71(g) is submitted to overcome a rejection under 35 U.S.C. 103(a) based upon a U.S. patent or U.S. patent application publication which qualifies as prior art only under 35 U.S.C. 102(e), and the examiner withdraws the rejection under 35 U.S.C. 103(a), but issues an Office action containing a new double patenting rejection based upon the disqualified patent or patent application publication, the Office action can be made final regardless of whether there are common inventors or assignees (provided that the examiner introduces no other new ground of rejection that was not necessitated by either amendment or an information disclosure statement filed during the time period set forth in § 1.97(c) with the fee set forth in § 1.17(p)).

Comment 13: Several comments requested that the processing fee stated in § 1.71(g)(2) be added to § 1.17(i).

Response: The processing fee is added to § 1.17(i) in this final rule.

Comment 14: One comment objected that § 1.71(g) requires more than the CREATE Act, and argued that the CREATE Act requires only the names of the parties to the joint research agreement who are the owners of an application or patent invoking the CREATE Act and the names of the owners of the disqualified application or patent.

Response: This comment goes against the clear statutory requirement that the names of the parties to the joint research agreement must be disclosed in order to invoke the prior art exclusion under the CREATE Act. The statute did not limit the required disclosure to just the owners of the patent rights involved.

Comment 15: One comment stated that § 1.104 uses inconsistent terminology.

Response: Section 1.104 has been amended to include the requirements for the statement to invoke the CREATE Act prior art exclusion. In addition, § 1.104 has been revised to be consistent with the terminology used in 35 U.S.C. 103(c), which uses both terms ''persons'' and ''parties.''

Comment 16: Many comments requested clarification of § 1.109, including clarification of when double patenting under § 1.109(b) would apply.

Response: Section 1.109 has been removed and this final rule includes guidelines concerning double patenting involving CREATE Act situations. The guidelines provided in this final rule were made after consideration of the comments submitted regarding § 1.109, with many of the comments being adopted. For example, the guidelines clearly set forth that double patenting rejections based on applications or patents to parties of a joint research agreement will only be made after the CREATE Act exclusion has been invoked. In addition, the guidelines do not require that the invention of the disqualified patent be made as a result of the activities within the scope of the joint research agreement as § 1.109(b) required in the interim rule.

Comment 17: Several comments questioned whether the Office has the authority to restrict licensing practice in the provisions of § 1.321(d) introduced in the interim rule. In addition, the comments expressed concern that the provisions of § 1.321(d) went beyond what is required by the CREATE Act and its legislative history.

Response: Section 1.321(d) has been amended in this final rule to remove several requirements set forth in the interim rule. First, terminal disclaimers no longer are required to have any restriction on licensing to overcome an obvious double patenting rejection based on prior art of a party to a joint research agreement. Second, the requirement that the owner of the disqualified application or patent sign the terminal disclaimer is removed. Therefore, the removal of these requirements from the provisions of § 1.321(d) has simplified the process of filing the terminal disclaimer while still maintaining the goals of the CREATE Act and its legislative history. Furthermore, the removal of these requirements of § 1.321(d) render moot many of the comments pertaining to this section.

Comment 18: Several Comments stated that the assignment rules in § 3.11 and § 3.31 should be more consistent with the requirements of § 1.71(g)(1).

Response: These comments are moot in view of the changes to § 1.71(g)(1) in this final rule. Section 1.71(g)(1) no longer requires the execution date and concise statement of the claimed invention and is limited to the statutory requirement of the names of the parties to the joint research agreement.

Comment 19: One comment suggested that the Office should consider requiring recordation of a notice that a terminal disclaimer has been filed to overcome a double patenting rejection to assist the public in finding such a terminal disclaimer.

Response: There is no need to require a separate recordation of a terminal disclaimer because any patent in which a terminal disclaimer has been filed has such a notation on the front page of the patent. In addition, any terminal disclaimer in the file of an issued patent can be reviewed by viewing the patent image file wrapper via the Patent Application Information Retrieval (PAIR) system.

Rule Making Considerations

Administrative Procedure Act: The changes in this final rule relate solely to the procedures to be followed in

prosecuting a patent application: *i.e.*, submitting the amendment necessary to invoke the ''safe harbor'' provision of 35 U.S.C. 103(c) as amended by the CREATE Act, filing of the type of terminal disclaimer necessary to overcome the double patenting rejection that may arise as a result of the CREATE Act, and submitting joint research agreements or excerpts of joint research agreements for recording by the Office. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and are exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler*, 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

Regulatory Flexibility Act: As discussed previously, the changes in this final rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this final rule. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0027, 0651–0031, 0651–0032, and 0651–0033. The United States Patent and Trademark Office is not resubmitting the information collections listed above to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with these information collections.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (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 to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, the interim rule amending 37 CFR Parts 1 and 3 which was published at 70 FR 1818–1824 on January 11, 2005, is adopted as final with the following changes:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.17 is amended by revising paragraph (i) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(i) Processing fee for taking action under one of the following sections which refers to this paragraph.....$130.00.

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

■ 3. Section 1.52 is amended by revising paragraph (e)(5) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(e) * * *

(5) The specification must contain an incorporation-by-reference of the material on the compact disc in a separate paragraph (§ 1.77(b)(5)), identifying each compact disc by the names of the files contained on each of the compact discs, their date of creation and their sizes in bytes. The Office may require applicant to amend the specification to include in the paper portion any part of the specification previously submitted on compact disc.

* * * * *

■ 4. Section 1.71 is amended by revising paragraph (g) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

(g)(1) The specification may disclose or be amended to disclose the names of the parties to a joint research agreement (35 U.S.C. 103(c)(2)(C)).

(2) An amendment under paragraph (g)(1) of this section must be accompanied by the processing fee set forth in § 1.17(i) if not filed within one of the following time periods:

(i) Within three months of the filing date of a national application;

(ii) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;

(iii) Before the mailing of a first Office action on the merits; or

(iv) Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

(3) If an amendment under paragraph (g)(1) of this section is filed after the date the issue fee is paid, the patent as issued may not necessarily include the names of the parties to the joint research agreement. If the patent as issued does not include the names of the parties to the joint research agreement, the patent must be corrected to include the names of the parties to the joint research agreement by a certificate of correction under 35 U.S.C. 255 and § 1.323 for the amendment to be effective.

■ 5. Section 1.76 is amended by revising paragraph (b)(5) to read as follows:

§ 1.76 Application data sheet.

* * * * *

(b) * * *

(5) *Domestic priority information.* This information includes the application number, the filing date, the status (including patent number if available), and relationship of each application for which a benefit is claimed under 35 U.S.C. 119(e), 120, 121, or 365(c). Providing this information in the application data sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and § 1.78(a)(2) or § 1.78(a)(5), and need not otherwise be made part of the specification.

* * * * *

■ 6. Section 1.96 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 1.96 Submission of computer program listings.

* * * * *

(c) *As an appendix which will not be printed:* Any computer program listing may, and any computer program listing having over 300 lines (up to 72 characters per line) must, be submitted on a compact disc in compliance with § 1.52(e). A compact disc containing such a computer program listing is to be referred to as a ''computer program listing appendix.'' The ''computer program listing appendix'' will not be part of the printed patent. The specification must include a reference to the ''computer program listing appendix'' at the location indicated in § 1.77(b)(5).

* * * * *

■ 7. Section 1.104 is amended by revising paragraph (c)(4) to read as follows:

§ 1.104 Nature of examination.

* * * * *

(c) * * *

(4) Subject matter which is developed by another person which qualifies as prior art only under 35 U.S.C. 102(e), (f) or (g) may be used as prior art under 35 U.S.C. 103 against a claimed invention unless the entire rights to the subject matter and the claimed invention were commonly owned by the same person or subject to an obligation of assignment to the same person at the time the claimed invention was made.

(i) Subject matter developed by another person and a claimed invention shall be deemed to have been commonly owned by the same person, or subject to an obligation of assignment to the same person in any application and in any patent granted on or after December 10, 2004, if:

(A) The claimed invention and the subject matter was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

(B) The claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

(C) The application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

(ii) For purposes of paragraph (c)(4)(i) of this section, the term ''joint research agreement'' means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(iii) To overcome a rejection under 35 U.S.C. 103(a) based upon subject matter which qualifies as prior art under only one or more of 35 U.S.C. 102(e), (f) or (g) via 35 U.S.C. 103(c)(2), the applicant must provide a statement to the effect that the prior art and the claimed invention were made by or on the behalf of parties to a joint research agreement, within the meaning of 35 U.S.C. 103(c)(3) and paragraph (c)(4)(ii) of this section, that was in effect on or before the date the claimed invention was made, and that the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement.

* * * * *

§ 1.109 [Removed and reserved]

■ 8. Section 1.109 is removed and reserved.

■ 9. Section 1.321 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.321 Statutory disclaimers, including terminal disclaimers.

* * * * *

(c) A terminal disclaimer, when filed to obviate judicially created double patenting in a patent application or in a reexamination proceeding except as provided for in paragraph (d) of this section, must:

(1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;

(2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application or in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and

(3) Include a provision that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent is commonly owned with the application or patent which formed the basis for the judicially created double patenting.

(d) A terminal disclaimer, when filed in a patent application or in a reexamination proceeding to obviate double patenting based upon a patent or application that is not commonly owned but was disqualified under 35 U.S.C. 103(c) as resulting from activities undertaken within the scope of a joint research agreement, must:

(1) Comply with the provisions of paragraphs (b)(2) through (b)(4) of this section;

(2) Be signed in accordance with paragraph (b)(1) of this section if filed in a patent application or be signed in accordance with paragraph (a)(1) of this section if filed in a reexamination proceeding; and

(3) Include a provision waiving the right to separately enforce any patent granted on that application or any patent subject to the reexamination proceeding and the patent or any patent granted on the application which formed the basis for the double patenting, and that any patent granted on that application or any patent subject to the reexamination proceeding shall be enforceable only for and during such period that said patent and the patent, or any patent granted on the application, which formed the basis for the double patenting are not separately enforced.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

■ 10. The authority citation for 37 CFR part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 11. Section 3.11 is amended by revising paragraph (c) to read as follows:

§ 3.11 Documents which will be recorded.

* * * * *

(c) A joint research agreement or an excerpt of a joint research agreement will also be recorded as provided in this part.

Dated: September 7, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–18217 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–UT–0003; FRL–7961–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Ogden City Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah. On November 29, 2004, the Governor of Utah submitted revisions to Utah's Rule R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' which incorporates a revised maintenance plan for the Ogden carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity budgets for the years 2005 and 2021. In addition, the Governor submitted revisions to Utah's Rule R307–110–35, ''Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County,'' which incorporates a revised vehicle inspection and maintenance program for Weber County. In this action, EPA is approving the Ogden City CO revised maintenance plan, the revised transportation conformity budgets, the revised vehicle inspection and maintenance program for Weber County, and the revisions to rules R307–110–12 and R307–110–35. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on November 14, 2005 without further notice, unless EPA receives adverse comment by October 14, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2005–UT–0003, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov, russ.tim@epa.gov*, and *mastrangelo.domenico@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2005–UT–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, 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. EPA's Regional Materials in EDOCKET and federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit

EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* 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 Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT:

Domenico Mastrangelo, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6436, and e-mail at: mastrangelo.domenico@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. What is the purpose of this action?
III. What is the State's process to submit these materials to EPA?
IV. EPA's evaluation of the Revised Maintenance Plan
V. EPA's evaluation of the Transportation Conformity Requirements
VI. EPA's evaluation of the Revised Vehicle Inspection and Maintenance Program
VII. Consideration of Section 110(l) of the CAA
VIII. Final Action
IX. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

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

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

(iii) The initials *NAAQS* mean National Ambient Air Quality Standard.

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

(v) The word *State* means the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of This Action?

In this action, we are approving a revised maintenance plan for the Ogden CO attainment/maintenance area that is designed to keep the area in attainment for CO through 2021, we're approving revised transportation conformity motor vehicle emissions budgets (MVEBs), and we're approving revisions to the vehicle inspection and maintenance program for Weber County. We are also approving revisions to Utah's Rule R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' and Rule R307–110–35, ''Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County,'' which merely incorporate the State's SIP revisions to the Ogden CO maintenance plan and the vehicle inspection and maintenance program for Weber County, respectively.

We approved the original CO redesignation to attainment and maintenance plan for the Ogden area on March 9, 2001 (see 66 FR 14078).

The original Ogden CO maintenance plan that we approved on March 9, 2001 (hereafter March 9, 2001 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and Local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the revised maintenance plan, the State recalculated the CO emissions for the 1992 attainment year, projected emission inventories for 2004, 2005, 2008, 2011, 2014, 2017, 2020, and 2021, and calculated all the mobile source emissions using MOBILE6.2. Based on projected significant mobile source emission reductions for the interim years between 2005 and 2021, the State's revised maintenance demonstration is also able to accommodate the relaxation of certain provisions for newer vehicles in the Weber County Vehicle Inspection and Maintenance (I/M) Program while continuing to demonstrate maintenance of the CO NAAQS. Thus, the State has asked us to approve a revision to ''Vehicle Inspection and Maintenance Program, Weber County'' (hereafter referred to as ''Weber County I/M

program'' or ''I/M program'')that allows vehicles less than six years old to be inspected every other year instead of annually. The State calculated a CO MVEB for 2005 and applied a selected amount of the available safety margin to the 2005 transportation conformity MVEB. The State calculated a CO MVEB for 2021 and beyond and also applied a selected amount of the available safety margin to the 2021 and beyond transportation conformity MVEB. We have determined that all the revisions noted above are Federally-approvable, as described further below.

III. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Utah Air Quality Board (UAQB) held a public hearing for the revised Ogden CO maintenance plan, the revised Weber County vehicle inspection and maintenance program, and the revisions to Rule R307–110–12 and Rule R307–110–35 on September 22, 2004. The revised plan elements and rules were adopted by the UAQB on November 3, 2004. The revised CO maintenance plan and Rule R307–110–12 became State effective on January 4, 2005 and the revised vehicle inspection and maintenance program and Rule R307–110–35 became State effective on November 4, 2004. The Governor submitted these SIP revisions to us on November 29, 2004. Additional administrative materials were submitted to us by the State on March 3, 2005.

We have evaluated the Governor's submittal for these SIP revisions and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the submittals were administratively and technically complete. Our completeness determination was sent on March 22, 2005, through a letter from Robert E. Roberts, Regional Administrator, to Governor Jon Huntsman Jr.

IV. EPA's Evaluation of the Revised Maintenance Plan

EPA has reviewed the State's revised maintenance plan for the Ogden attainment/maintenance area and believes that approval is warranted. The following are the key aspects of this revision along with our evaluation of each:

(a) The State has air quality data that show continuous attainment of the CO NAAQS.

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The March 9, 2001 maintenance plan relied on ambient air quality data from 1992 through 1999. In our consideration of the revised Ogden maintenance plan, submitted by the Governor on November 29, 2004, we reviewed ambient air quality data from 1992 through 2004. The Ogden area shows continuous attainment of the CO NAAQS from 1992 to present. All of the above-referenced air quality data are archived in our Air Quality System (AQS).

(b) Using the MOBILE6.2 emission factor model, the State revised the attainment year inventory (1992) and provided projected emissions inventories for the years 2004, 2005, 2008, 2011, 2014, 2017, 2020, and 2021.

The revised maintenance plan that the Governor submitted on November 29, 2004, includes comprehensive inventories of CO emissions for the Ogden area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the revised 1992 attainment year inventory, and the projected emissions inventories for 2004, 2005, 2008, 2011, 2014, 2017, 2020, and 2021, are documented in the maintenance plan in section IX.C.8.b entitled ''Emission Inventories and Maintenance Demonstration,'' and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1992 attainment year and the projected years are provided in Table IV–1 below.

TABLE IV–1

[Summary of CO emissions in tons per day for the Ogden area]

Source category	1992	2004	2005	2008
Point*	0	0	0	0
Area	6.28	3.15	3.14	3.14
Non-Road	6.71	7.81	7.99	8.40
On-Road	93.50	42.58	44.54	34.14
Total	106.49	53.54	55.67	45.68

Source category	2011	2014	2017	2020	2021
Point*	0	0	0	0	0
Area	3.16	3.17	3.15	3.10	3.09
Non-Road	8.82	9.26	9.72	10.21	10.38
On-Road	32.07	30.48	29.72	29.28	29.47
Total	44.05	42.91	42.59	42.59	42.94

* There were no major CO point sources in the Ogden maintenance area; the State included point source emissions in the Area source category.

The revised mobile source emissions show that the largest change from the original March 9, 2001 maintenance plan is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see ''Mobile Source 1992 Base Year Inventory Using MOBILE6.2,'' pages 3.b.v-1 through 3.b.v-5; and ''Mobile Source Projection Year Inventories Using MOBILE6.2,'' pages 4.e-1 through 4.e-3) and on a compact disk produced by the State (see ''Supplemental Mobile Source Data (CD–ROM),'' section 2.d.). A copy of the State's compact disk is available upon request to EPA. The compact disk contains much of the modeling data, MOBILE6.2 input-output files, fleet makeup, MOBILE6.2 input parameters, and other information, and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates provided to the State by the Wasatch Front Regional Council (WFRC) which is the metropolitan planning organization (MPO) for the Ogden area. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the March 9, 2001 Ogden maintenance plan.

The March 9, 2001 CO maintenance plan utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the updated version of the model, MOBILE6. The policy guidance was entitled ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity'' (hereafter, January 18, 2002 MOBILE6 policy). Additional policy guidance regarding EPA's MOBILE model was issued on November 12, 2002, which notified Federal, State, and Local agencies that the updated MOBILE6.2 model was now available and was the recommended version of the model to be used. We note that the State used the MOBILE6.2 model to revise the Ogden maintenance plan.

Our January 18, 2002, MOBILE6 policy allows areas to revise their motor vehicle emission inventories and transportation conformity MVEBs using the MOBILE6 model without needing to revise the entire SIP or completing additional modeling if: (1) The SIP continues to demonstrate attainment or maintenance when the MOBILE5-based motor vehicle emission inventories are replaced with MOBILE6 base year and attainment/maintenance year inventories and, (2) the State can document that the growth and control strategy assumptions for non-motor vehicle emission sources continue to be valid and minor updates do not change the overall conclusion of the SIP. Our January 18, 2002 MOBILE6 policy also speaks specifically to CO maintenance plans on page 10 of the policy. The first paragraph on page 10 of the policy states ''* * *if a carbon monoxide (CO) maintenance plan relied on either a relative or absolute demonstration, the first criterion could be satisfied by documenting that the relative emission reductions between the base year and the maintenance year are the same or greater using MOBILE6 as compared to MOBILE5.''

The State could have used the streamlined approach described in our January 18, 2002 MOBILE6 policy to update the Ogden carbon monoxide MVEBs. However, the Governor's November 29, 2004 SIP submittal instead contained a completely revised maintenance plan and maintenance demonstration for the Ogden area. That is, all emission source categories (point, area, non-road, and on-road mobile) were updated using the latest versions of applicable models (including MOBILE6.2,) transportation data sets, emissions data, emission factors, population figures and other demographic information. We have determined that this fully revised maintenance plan SIP submittal exceeds the requirements of our January 18, 2002 MOBILE6 policy and, therefore, our January 18, 2002 MOBILE6 policy is not relevant to our approval of the revised maintenance plan and its MVEBs.

As discussed above, the State prepared a revised attainment year inventory for 1992, and new emission inventories for the years 2004, 2005, 2008, 2011, 2014, 2017, 2020 and 2021. The results of these calculations are presented in Table 3 ''Emissions Projections for Interim Years'' on page 5 of the revised Ogden maintenance plan (Utah SIP Section IX, Part C.8) and are also summarized in our Table IV–1 above. In addition, we note that the State modified the Weber County I/M program to specify that vehicles less than six years old are to have their emissions tested every other year instead of annually (see our discussion and evaluation in section VI below.)

The State performed an analysis of this relaxation of the Weber County I/M program and determined that this change could be implemented for Weber County, beginning in 2005, without jeopardizing maintenance of the CO NAAQS. As noted below in section VI, we reviewed the State's methodology and analysis and we have determined they are acceptable. The effects of this I/M rule relaxation were incorporated into the State's mobile sources modeling with MOBILE6.2, as applicable to the years 2005, 2008, 2011, 2014, 2017, 2020, and 2021, and these results are reflected in the Table 3 of the maintenance plan and in our Table IV–1 above.

We have determined that the State has demonstrated, using MOBILE6.2, that mobile source emissions continuously decline from 1992 to 2021 and that the total CO emissions from all source categories, projected for years 2004, 2005, 2008, 2011, 2014, 2017, 2020 and 2021, are all below the 1992 attainment year level of CO emissions. Therefore, we are approving the revised maintenance plan as it demonstrates maintenance of the CO NAAQS from 1992 through 2021, while allowing the I/M relaxations from the revisions to the Weber County I/M program.

(d) Monitoring Network and Verification of Continued Attainment.

Continued attainment of the CO NAAQS in the Ogden area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section IX.C.8.e: ''Monitoring Network/ Verification of Continued Attainment'' of the revised Ogden CO maintenance plan. In section IX.C.8.e, the State commits to continue the operation of the CO monitor in the Ogden area, in accordance with the provisions of 40 CFR 58, and to annually review this monitoring network and gain EPA approval before making any changes.

Also, in section IX.C.8.e and IX.C.8.f, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by the WFRC. Since regular revisions to Ogden's transportation improvement programs and long range transportation plans must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the revised maintenance plan. This regional transportation conformity process is conducted by WFRC in coordination with Utah's Division of Air Quality (UDAQ), the UAQB, the Utah Department of Transportation (UDOT) and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements. We note that our

final rulemaking approval renders the State's commitments federally enforceable.

(e) Contingency Plan.

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in section IX.C.8.f of the revised maintenance plan, the contingency measures for the Ogden area will be triggered by a violation of the CO NAAQS. However, the State approaches the development and implementation of contingency measures from a two-step process; first, upon an exceedance of the CO NAAQS and second, upon a violation of the CO NAAQS.

The UDAQ will notify the Ogden City government and EPA of an exceedance of the CO NAAQS generally within 30, but no more than 45 days. Upon notification of a CO exceedance, the UDAQ in coordination with the WFRC, will begin evaluating and developing potential contingency measures that are intended to correct a violation of the CO NAAQS. This process will be completed within six months of the notification that an exceedance of the CO NAAQS has occurred. If a violation of the CO NAAQS has occurred, a public hearing process will begin at the local and State levels. Should the UAQB conclude that the implementation of local measures will prevent further exceedances or violations of the CO NAAQS, the UAQB may approve or endorse local measures without adopting State requirements. If, however, the UDAQ decides locally-adopted contingency measures are inadequate, the UDAQ will recommend to the UAQB that they instead adopt State-enforceable measures as deemed necessary to address the current violation(s) and prevent additional exceedances or violations. Regardless of whether the selected contingency measures are local-or State-adopted, the necessary contingency measures will be implemented within one year of a CO NAAQS violation. The State also indicates in section IX.C.8.f that any State-enforceable measure will become part of the next revised maintenance plan submitted for EPA approval.

The potential contingency measures identified in section IX.C.8.f(3) of the revised Ogden CO maintenance plan include: (1) A return to annual inspections for all vehicles; (2) improvements to the current I/M program in the Ogden area; (3) mandatory employer-based travel reduction programs as allowed by statute; (4) implementation of 2.7% oxygenated gasoline in Weber County from November 1 through the end of February; (5) and other emission control measures appropriate for the area.

Based on the above, we find that the contingency measures provided in the State's revised Ogden CO maintenance plan are sufficient and continue to meet the requirements of section 175A(d) of the CAA.

(f) Subsequent Maintenance Plan Revisions.

Section IX.C.8.g of the State's revised maintenance plan states that:

> ''No maintenance plan revision will be needed after 2021, as that is the 20th year following EPA approval of the original maintenance plan. No further maintenance plan is needed after successful maintenance of the standard for 20 years. However, the State will update the Plan if conditions warrant.''

This is essentially a correct interpretation of the length of time that an area is required to demonstrate maintenance of the CO NAAQS as provided in sections 175A(a) and 175A(b) of the CAA. Although this language in section IX.C.8.g of the revised Ogden CO maintenance plan does not address the specific requirements for the submittal of a revised maintenance plan as stated in section 175A(b) of the CAA, we have concluded it is sufficient to meet the intent of section 175A(b).

The requirement for a subsequent maintenance plan submittal appears in section 175A(b) of the CAA which states ''8 years after redesignation of any area as an attainment area under section 107(d), the State shall submit to the Administrator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a).'' As EPA redesignated the Ogden City CO nonattainment area to attainment on March 9, 2001, a subsequent maintenance plan submittal from the State, to address the requirements of section 175A(b) of the CAA, would normally be submitted to us by March 9, 2009. However, as the Governor's November 29, 2004 submittal of the revised Ogden CO maintenance plan provides a sufficiently robust maintenance demonstration through 2021, we find that this revised maintenance plan addresses the requirements of section 175A(b) of the CAA.

Regardless of the requirements of section 175(A) of the CAA, though, other sections of the CAA, presently in place or adopted in the future, may require the State to revise the maintenance plan and/or Utah SIP more generally, to ensure that the area continues to meet the CO NAAQS. Section 110(a)(1) of the CAA is an example of such a provision. Also, we interpret the quoted statement above as merely indicating that section 175A does not require a further maintenance plan revision after 2021; we do not interpret it to mean that the maintenance plan will automatically terminate after 2021. EPA's longstanding interpretation is that SIP provisions remain in place until EPA approves a revision to such provisions. The only exception is if the SIP contains explicit language that some or all of its provisions will terminate upon a specific future date. The maintenance plan does not contain such explicit language. Based on our interpretation, section IX.C.8.g of the State's revised maintenance plan is acceptable to us.

Based on our review and evaluation of the components of the revised Ogden CO maintenance plan, as discussed in our items IV.(a) through IV.(f) above, we have concluded that the State has met the necessary requirements in order for us to approve the revised Ogden CO maintenance plan.

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation (40 CFR part 93) requires a demonstration that emissions from the long range transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

With respect to maintenance plans, our conformity regulation requires that MVEB(s) must be established for the last year of the maintenance plan and may be established for any other years deemed appropriate (40 CFR 93.118). For transportation plan analysis years after the last year of the maintenance plan (in this case 2021), a conformity determination must show that emissions are less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the implementation plan. EPA's

conformity regulation (40 CFR 93.124) also allows the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement. The implementation plan can then allocate some or all of this additional ''safety margin'' to the emissions budget(s) for transportation conformity purposes.

Section IX.C.8.d ''Mobile Source Carbon Monoxide Emissions Budgets for Transportation Conformity'' of the revised Ogden CO maintenance plan briefly describes the applicable transportation conformity requirements, provides MVEB calculations, identifies ''safety margin,'' and indicates that the UAQB elected to apply some of the ''safety margin'' to the MVEB(s) for 2005 and 2021.

In section IX.C.8.d of the revised maintenance plan, the State evaluated two MVEBs: a budget for 2005, and a budget applicable to the maintenance year 2021. For the 2021 MVEB, the State subtracted the total estimated 2021 emissions (from all sources) of 42.94 Tons Per Day (TPD) from the 1992 attainment year total emissions of 106.49 TPD. This produced a ''safety margin'' of 63.55 TPD. The State then reduced this ''safety margin'' by 20 TPD. The identified ''safety margin'' of 43.55 TPD for 2021 was then added to the estimated 2021 mobile sources emissions, 29.47 TPD, to produce a 2021 MVEB of 73.02 TPD. For the 2005 MVEB, the State subtracted the total estimated 2005 emissions (from all sources) of 55.67 TPD from the 1992 attainment year total emissions of 106.49 TPD. This produced a ''safety margin'' of 50.82 TPD. The State then reduced this ''safety margin'' by 20 TPD. The identified ''safety margin'' of 30.82 TPD for 2005 was then added to the estimated 2005 mobile sources emissions, 44.54 TPD, to produce a 2005 MVEB of 75.36 TPD.

As noted above, the Governor submitted the original Ogden CO maintenance plan to us on December 9, 1996 and we approved it on March 9, 2001 (see 66 FR 14078). This original maintenance plan demonstrated maintenance of the CO NAAQS through 2007. While our conformity rule (see 40 CFR 93) does not require a MVEB for years other than the last year of the maintenance period, states have the option to establish MVEBs for other years too. The State's December 9, 1996, maintenance plan established MVEB(s) for 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and the years 2008 through 2017. As noted in our March 9, 2001 action, the State identified a 55 TPD MVEB for the years 2008 through 2017, and EPA approved this 55 TPD MVBE for use in any transportation conformity determinations for the years 2008 and beyond (see 66 FR 14078, pages 14083 and 14084).

The revised Ogden CO maintenance plan, that was submitted to us on November 29, 2004, states, ''This plan retracts the emissions budgets for 2005–2017 that were included in the original Ogden Carbon Monoxide Maintenance Plan submitted to EPA in 1996.'' EPA interprets this language to mean that the State is retracting the 1996 maintenance plan budgets for years 2005, 2006, 2007, and 2008 through 2017. The November 29, 2004 maintenance plan establishes new MVEBs for 2005 and 2021 based on MOBILE6.2. In part, the State chose these budget years and retracted budgets for other years based on input from Region 8.

However, Region 8 recently discovered that we misinterpreted the CAA requirements regarding initial maintenance plan MVEBs and mistakenly advised the State that it could entirely remove a MVEB for 2007 from the maintenance plan. Instead, EPA's interpretation is that a MVEB for the last year of the first maintenance period must be retained as a specific MVEB year when a second maintenance plan is submitted to meet the requirements of section 175A(b) of the CAA. We should have advised the State to retain a MVEB for 2007.[1]

As described below, however, we believe the lack of a 2007 MVEB in this case is not significant and that approval of the revised maintenance plan and MVEBs is still warranted. In section IV of this action, we describe how the revised Ogden CO maintenance plan meets our criteria for approval and that the State has demonstrated maintenance of the CO NAAQS for the entire maintenance period through 2021. Essentially, the State demonstrated that total CO emissions in future years through 2021 will be less than the 1992 attainment year level of CO emissions. Table V–1 below, which is taken from Table 3 of section IX.C.8.b of the State's revised maintenance plan, illustrates this point. We have also included in this table the available safety margin that the State could have applied to the MVEB in each projection year.

TABLE V–1

[All emissions are in tons per day of CO]

Year	Area sources	On-road mobile sources	Non-road sources	Point sources*	Total emissions	Available safety margin
1992	6.28	93.50	6.71	0.00	106.49	
2004	3.15	42.58	7.81	0.00	53.54	52.95
2005	3.14	44.54	7.99	0.00	55.67	50.82
2008	3.14	34.14	8.40	0.00	45.68	60.81
2011	3.16	32.07	8.82	0.00	44.05	62.44
2014	3.17	30.48	9.26	0.00	42.91	63.58
2017	3.15	29.72	9.72	0.00	42.59	63.90
2020	3.10	29.28	10.21	0.00	42.59	63.90
2021	3.09	29.47	10.38	0.00	42.94	63.55

* The State indicated there were no major point sources of CO and that point source emissions were included with the Area Sources category.

Based on the information from Table V–1 above, Table V–2 below illustrates the State-specified MVEBs for 2005 and 2021. It also shows that, based on available safety margin, the State could have specified the same 2005 budget of 75.36 TPD for any of the other projection years. We note the emissions estimates for 2008, 2011, 2014, 2017,

[1] This doesn't mean the State would have had to retain the same exact budget. With a proper demonstration, a state can revise the budget for the last year of the first 10-year maintenance period.

and 2020 are provided in Table V–2 for illustrative purposes only; emissions estimates for these years do not represent MVEBs.

TABLE V–2

[All emissions are in tons per day of CO.; MVEBs are shown in bold]

Year	On-road mobile source emissions	Available safety margin	On-road mobile source emissions with allocated safety margins	Remaining safety margin
2005 **	44.54	50.82	**75.36**	20
2008	34.14	60.81	75.36	19.59
2011	32.07	62.44	75.36	19.15
2014	30.48	63.58	75.36	18.70
2017	29.72	63.90	75.36	18.26
2020	29.28	63.90	75.36	17.82
2021 **	29.47	63.55	**73.02**	20

** Emissions estimates for 2005 and 2021 represent MVEBs established in the CO maintenance plan.

It is evident from the emissions trends from 2005 forward, and from the amount of remaining safety margin in 2005 and 2008, that the State could have established 75.36 tons per day of CO as the 2007 MVEB too. In other words, the 2005 MVEB is reasonably representative of 2007.

A 2007 MVEB would have applied for any conformity determination for analysis years between 2007 and 2021. The 2005 MVEB must be used for any conformity determination for analysis years between 2005 and 2021. See 40 CFR 93.118(b)(2)(iv). In other words, the elimination of the 2007 MVEB has limited, if any, practical effect. For a conformity analysis of any transportation plan or program, there will still be a quantitative budget analysis for any analysis years between 2005 and 2021, as required by 40 CFR 93.118(b), and conformity will have to be shown to a MVEB of 75.36 TPD of CO, the same MVEB the State could have specified for 2007.

We also note that the 2005 MVEB is reasonably representative of 2011. This was the year for which EPA extracted data from the State's TSD in its March 9, 2001 action to meet the 10-year maintenance requirement in section 175A(a) of the CAA. See 66 FR 14078. Normally, the initial maintenance plan would have established a MVEB for 2011, and the current maintenance plan should then have included a MVEB for 2011. However, Table V–2 above shows that a budget identical to the 2005 MVEB of 75.36 tons per day of CO could have also been established in 2008 and 2011. Based on our discussion above relative to MVEB for 2005 and 2007, and the information from Table V–2, it is evident that the 2005 MVEB could have been established for 2011 as well. For the same reasons that the lack of a 2007 MVEB has limited, if any, practical effect, the lack of a 2011 MVEB also has limited, if any, practical effect.

Pursuant to § 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source emissions budgets. EPA reviewed the revised Ogden CO maintenance plan's emission budget for 2021 for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budget was adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Utah Division of Air Quality May 2, 2005, and was announced in the **Federal Register** on May 26, 2005 (70 FR 30440). As a result of this adequacy finding, the 2021 budget took effect for conformity determinations in the Ogden area on June 10, 2005. However, we note that we are not bound by this determination in acting on the revised Ogden CO maintenance plan.

We have concluded that the State has satisfactorily demonstrated continued maintenance of the CO NAAQS while using transportation conformity MVEBs of 75.36 TPD for 2005 and 73.02 TPD for 2021. Therefore, we are approving the transportation conformity MVEBs of 75.36 and 73.02 TPD of CO for the Ogden attainment/maintenance area, for 2005 and 2021.

VI. EPA's Evaluation of the Revised Vehicle Inspection and Maintenance Program

In developing the Ogden revised CO maintenance plan, the State revised section X, part E, of the Utah State Implementation Plan, ''Vehicle Inspection and Maintenance Program, Weber County,'' to go from an annual to an every-other-year testing program for vehicles less than six years old.

The Weber County I/M program revisions adopted by the UAQB on November 3, 2004, State effective on November 4, 2004, and submitted by the Governor on November 29, 2004, reflect the changes in State law, section 41–6–163.4, Utah Code Annotated, for implementing the I/M program in Weber County. After EPA approval, this State provision will become part of the federally-enforceable SIP. The revised maintenance plan reflects the changes in the Weber County I/M program in that mobile source CO emissions were calculated for the Ogden area for the years 2005, 2008, 2011, 2014, 2017, 2020, and 2021, assuming every-other-year testing for vehicles less than six years old. Even with this relaxation of the I/M requirements, the emission projections indicate that the Ogden area will maintain the CO NAAQS from 2005 through 2021.

We note a discrepancy between the Weber County I/M program and appendix 1, ''Weber-Morgan Health Department Regulation for Motor Vehicle Inspection Maintenance Program'' (hereafter ''appendix 1''). Appendix 1, section 6.0, ''General Provisions,'' indicates that the Weber-Morgan Health Department can require either an annual or biennial program. The maintenance demonstration is based on an annual program for vehicles six years or older and a biennial program for vehicles less than six years old. Any decision by the Weber-Morgan Health Department to expand the biennial program to other vehicles will only be federally effective upon EPA approval as a SIP revision.

Also, section 13.2 of appendix 1 indicates that the adopted cut-points for

motor vehicle emission inspections contained in appendix C to appendix 1 shall remain in effect until changed by the Board of Health. However, section 13.2 also states that the maximum concentration of cut-points shall be adopted by the Board of Health to meet the NAAQS established by EPA. As with the frequency of inspections described above, the maintenance demonstration is based on the cut-points contained in appendix C to appendix 1. Given this, any decision by the Board of Health to change the cut-points in Appendix C to Appendix 1 shall only be federally effective upon EPA approval of such change as a SIP revision.

This is consistent with the interpretation of the Utah Division of Air Quality expressed in an August 2, 2005 letter from Richard W. Sprott to Gary House of the Weber-Morgan Board of Health.

We have evaluated and determined that the Weber County I/M program revisions described above are acceptable to us and we are approving them now in conjunction with this action.

VII. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The revised Ogden CO maintenance plan and Weber County I/M program will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VIII. Final Action

In this action, EPA is approving the revised Ogden CO maintenance plan, the revisions to Utah's Rule R307–110–12 (which incorporates the revised CO maintenance plan into the Utah Rules,) the revised transportation conformity CO motor vehicle emission budget for the years 2005 and 2021, the revised Weber County vehicle inspection and maintenance program, and the revisions to Utah's Rule R307–110–35 (which incorporates the revised Weber County vehicle inspection and maintenance program into the Utah Rules,) all as submitted by the Governor on November 29, 2004.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective November 14, 2005 without further notice unless the Agency receives adverse comments by October 14, 2005. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2005. Filing a petition for reconsideration by the Administrator of

this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 17, 2005.

Stephen S. Tuber,

Acting Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart TT—UTAH

■ 2. Section 52.2320 is amended by adding paragraph (c)(61) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(61) Revisions to the Utah State Implementation Plan, Section IX, Part C.8, ''Carbon Monoxide Maintenance Provisions for Ogden,'' as submitted by the Governor on November 29, 2004; revisions to UAC R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' as submitted by the Governor on November 29, 2004; revisions to the Utah State Implementation Plan, Section X, ''Vehicle Inspection and Maintenance Program, Part E, Weber County,'' as submitted by the Governor on November 29, 2004; and revisions to UAC R307–110–35, ''Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County,'' as submitted by the Governor on November 29, 2004.

(i) Incorporation by reference.

(A) UAC R307–110–12, as adopted by the Utah Air Quality Board on November 3, 2004, effective January 4, 2005. This incorporation by reference of UAC R307–110–12 only extends to the following Utah SIP provisions and excludes any other provisions that UAC R307–110–12 incorporates by reference:

Section IX, Part C.8, ''Carbon Monoxide Maintenance Provisions for Ogden,'' adopted by the Utah Air Quality Board on November 3, 2004, effective January 4, 2005.

(B) UAC R307–110–35, ''Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County,'' as adopted by the Utah Air Quality Board on November 3, 2004, effective November 4, 2004.

(ii) Additional Materials

(A) A July 28, 2005 letter from Jan Miller, Utah Department of Environmental Quality, to Kerri Fiedler, EPA Region VIII, to address typographical errors in the November 29, 2004 submittal.

(B) An August 2, 2005 letter from Richard Sprott, Utah Department of Environmental Quality, to Gary House, Weber-Morgan Board of Health, addressing limits on Weber County authority to revise vehicle emission cutpoints.

[FR Doc. 05–18232 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0166; FRL–7729–6]

Ethylhexyl Glucopyranosides; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes two exemptions from the requirement of a tolerance for residues of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl when used as inert ingredients in or on growing crops. Akzo Nobel Surface Chemistry LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of these two ethylhexyl glucopyranoside chemicals.

DATES: This regulation is effective September 14, 2005. Objections and requests for hearings must be received on or before November 14, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2002–0166. 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: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing 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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Documents and Other Related Information?

In addition to using EDOCKET at (*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 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 7, 2002 (67 FR 51260) (FRL–7190–4), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 7E4807) by Akzo Nobel Surface Chemistry LLC, 200 South Riverside Plaza, Chicago, IL 60606. The petition requested that 40 CFR 180.1001(d) now redesignated as 40 CFR 180.920 (April 28, 2004, 69 FR 23113, FRL–7335–4) be amended by establishing an exemption from the requirement of a tolerance for residues of 2-ethylhexyl glucopyranoside when used as an inert ingredient (surfactant) in pesticide products applied to growing crops only. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

During its evaluation of the information submitted by Akzo Nobel, the Agency determined that the actual 2-ethylhexyl glucopyranosides to be considered under PP 7E4807 are: [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- (CAS Reg. No. 330980–61–5)and [alpha]-D-glucopyranoside, 2-ethylhexyl (CAS Reg. No. 125590–73–0).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl are discussed in this unit.

The test substance for all of the studies submitted by the petitioner for review and evaluation was identified as a mixture of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl. Thus, both chemicals were in the test substance.

A. Acute Toxicity

The Agency's review of the following five acute toxicity studies and the toxicity category classification, are shown in Table 1. Toxicity Category I is indicative of very high acute toxicity. Toxicity Category IV is the Agency's lowest rating of acute toxicity.

TABLE 1.—ACUTE TOXICITY STUDIES

Study/Species	Results	Toxicity Category
Acute oral toxicity/rat	Lethal Dose $(LD)_{50}$ > 2,000 milligrams/kilogram (mg/kg) and <5,000 mg/kg (males and females)	III
Acute dermal toxicity/rat	LD_{50} > 2380 mg/kg (males and females)	IV
Primary eye irritation/rabbit	Corrosive	I
Primary dermal irritation/rabbit	Not irritating	IV
Dermal sensitization/guinea pig	Weak dermal sensitizer	N/A

B. Mutagenicity

A *Salmonella*/microsome reverse gene mutation assay (Ames Test) and an *in vitro* mammalian cytogenetics assay were reviewed for the Agency by the Department of Energy's Oakridge National Laboratory (ORNL), and the results of their review are presented in Table 2.

TABLE 2.—MUTAGENICITY STUDIES

Type of Study	Results
Salmonella/microsome reverse gene mutation assay (Ames Test)	Negative. No increase in the mean number of revertants per plate with or without S9-mix, in any tester strain either assay.
In vitro mammalian cytogenetics assay	Negative with and without activation.

C. Repeated Dose Toxicity

The repeated dose toxicity of 2-ethylhexylglucoside was investigated in a 28–day oral (gavage) toxicity study in rats, which was also reviewed by ORNL. Sprague-Dawley rats, were administered doses of 0, 15, 150, or 750 mg/kg/day. The NOAEL (no observed adverse effect level) was determined to be 150 mg/kg/day in females. The LOAEL (lowest observed adverse effect level) in females was 750 mg/kg/day in females due to decreased food consumption and an associated, statistically significant reduction in overall body weight gain (80% of weight gain of the control group). The NOAEL in males is equal to or greater than 750 mg/kg/day (highest dose tested - (HDT)). A LOAEL in males could not be determined, but would be greater than 750 mg/kg/day. The reduction in body weights and overall body weight gains in the high-dose females is likely representative of an adverse effect of the chemicals, and not related to a palatability problem, as the mode of administration was gavage.

D. Reproductive Toxicity

A recently conducted one-generation reproduction toxicity study of the two chemicals was reviewed by ORNL. The test substance was administered by oral gavage to Wistar rats at doses of 0, 15, 150, or 750 mg/kg/day. The premating period of exposure to the test substance was ten weeks for the males and two weeks for the females. Eight treatment related mortalities (four males and four females) occurred in the F0 parental generation at the HDT, 750 mg/kg/day. In addition, statistically significant decreases in body weights and food consumption of the F0 high-dose males and females were observed during the premating period. Clinical signs that were increased in parental animals at the 750 mg/kg/day dose level included brown staining of the head, back, neck, and/or genital region, rales, and hunched posture (females only). Postmortem examinations did not reveal any biologically significant abnormalities. The parental systemic toxicity NOAEL is 150 mg/kg/day. The parental toxicity LOAEL is 750 mg/kg/day based on statistically significant decreases in body weights and decreases in food consumption of the F0 males and females, increased mortality, and clinical signs.

There were no treatment-related effects on health, viability, body weight, and sex ratios of the F1 offspring. The offspring systemic toxicity NOAEL would be equal to or greater than 750 mg/kg/day. A LOAEL is not identified but would be greater than 750 mg/kg/day. Mating performance and fertility of males and females of the F0 parental generation were not adversely affected. The NOAEL for reproductive toxicity is equal to or greater than 750 mg/kg/day (HDT). A LOAEL is not identified but would be greater than 750 mg/kg/day.

E. Metabolism

The petitioner submitted an article from open literature on metabolism studies in mice conducted with the structurally-related chemicals (octyl β-D-glucoside, dodecyl β-D-maltoside, and hexadecyl β-D-glucoside). The radiolabeled test material consisted of octyl β-D-[U-^{14}C]glucoside, [l-^{14}C]dodecyl β-D-maltoside and [l-^{14}C]hexadecyl β-D-glucoside). The treated animals were sacrificed two hours following administration of the test material. Radioactivity analysis indicated that most radioactivity was found in the stomach, intestine, liver and kidneys. The test material was hydrolyzed to form sugar and long chain alcohols, which were then processed in the mammalian body's pathways for carbohydrate and lipid metabolism. Most metabolites were excreted via urine, and appeared to be water soluble. For [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl, the long chain alcohol formed via hydrolysis would be 2-ethylhexanol.

F. Toxicity of 2-EthylHexanol

Since 2-ethylhexanol is the alcohol formed via hydrolysis, toxicity studies performed using 2-ethylhexanol as the test substance can be used to further understand the toxicity of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl.

Under a Toxic Substances Control Act (TSCA) test rule, toxicity studies performed using 2-ethylhexanol were submitted to the Agency's Office of Pollution Prevention and Toxics (OPPT). Reviews of two carcinogenicity studies (mouse and rat) and a dermal developmental toxicity study are posted on the Agency's website (see *http://www.epa.gov/opptintr/chemtest/ethylhex.htm*). The conclusions of the Agency's reviewers were that 2-ethylhexanol is not carcinogenic in the mouse under the conditions of the study, and that there is no evidence of carcinogenicity in the rat at any dose level tested. In the developmental toxicity study there was no evidence of developmental toxicity at any dose level. The dermal developmental NOAEL is therefore equal to or greater than the HDT, 3.0 milliliter (mL)/kg/day or 2,520 mg/kg/day. Maternal effects (reduced weight gain) were noted at the 3.0 mL/kg/day dose level. Exfoliation occurred at the application site at the 1.0 mL/kg/day dose level. The maternal NOAEL is 0.3 mL/kg/day or 252 mg/kg/day.

G. Conclusions

Acute toxicity studies on a mixture of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl indicate that these two chemicals are of low acute oral and dermal toxicity, are a non-irritant to the skin, but a weak sensitizer. The chemicals are severe eye irritants.

Metabolism studies on structurally-related chemicals indicate that the body can effectively metabolize these two chemicals to water-soluble substances (predominantly sugar and 2-ethylhexanol) that are readily excreted from the body.

A predominant effect in both the repeated dose toxicity study and the one-generation reproductive toxicity study is decreased weight gain at the 750 mg/kg/day dose level. Considering both of these studies, the NOAEL for [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl is 150 mg/kg/day. In the one-generation reproductive study using [alpha]-D-

glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl as the test substance, both the offspring systemic toxicity NOAEL and the NOAEL for reproductive toxicity is equal to or greater than 750 mg/kg/day (HDT).

[alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl were not mutagenic in either of the two mutagenicity assays.

Given the relationship of 2-ethylhexanol as a metabolite of the mammalian body's metabolism of these two chemicals, data on 2-ethylhexanol can be used to judge that [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl are not carcinogens or developmentally toxic.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

1. *Food*. The Agency has developed a screening-level model for predicting dietary exposure to inert ingredients. The results of this model are considered to over-estimate exposure to an inert ingredient in a pesticide product. The modeled chronic dietary exposure for the US population is 0.12 mg/kg/day. This is well-below any dose level at which an adverse effect is expected from exposure to [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl.

2. *Drinking water exposure*. EPA has estimated the fate and biodegradation properties of the larger of the two ethylhexyl glucosides that are the subject of this final rule using EPI-Suite and the PBT profiler. Screening-level tools such as EPI-Suite and the PBT profiler are deliberately designed to be easy-to-use, fast, and conservative in nature. (see *http://pbtprofiler.net* and *http://www.epa.gov/opptintr/exposure/docs/episuite.htm*). If modeled estimates do not indicate a level of concern, then higher-tiered modeling or measured data may not be needed. The modeled estimates indicate that a chemical substance such as the ethylhexyl glucosides are soluble in water, but are expected to degrade rapidly in the environment. Degradation begins within a matter of hours or days, with these primary degradation products including glucose and 2-ethylhexanol which will continue to degrade. Ultimate degradation (to carbon dioxide and water) occurs in days to weeks. These glucoside chemicals are soluble, non-volatile, and mobile. Leaching to ground water is likely in highly porous soils, but mitigated in other soils due to the rapid biodegradation. Migration to ground water drinking water sources is possible, but will be limited by the rapid primary degradation.

Based on the available modeling (EPI-Suite models and the PBT profiler), the Agency judges that it is very unlikely that these glucosides will reach either ground or surface water, or bioaccumulate in the environment. This conclusion is based on its rather rapid primary degradation (estimated to be hours to days), and ultimate biodegradation to carbon dioxide and water. Significant concentrations of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl in sources of drinking water is very unlikely.

B. Other Non-Occupational Exposure

Chemicals such as [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl are used in dishwashing detergents, cleaning products and degreasers. A typical concentration in such a product would be less than 15%.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticide chemicals for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl and any other substances. [alpha]-D-Glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA concluded that a different margin of safety will be safe for infants and children. [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl are readily metabolized in the mammalian body to sugars and 2-ethylhexanol. Information on the metabolite 2-ethylhexanol indicates that there is no increased susceptibility. In the reproductive study conducted using [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl

both the offspring systemic toxicity NOAEL and the NOAEL for reproductive toxicity is equal to or greater than 750 mg/kg/day (HDT). Given the parental NOAEL of 150 mg/kg/day, there is no increased susceptibility. A safety factor analysis has not been used to assess the risk of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VIII. Determination of Safety for U.S. Population, and Infants and Children

Based on the available toxicity data on [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl, and on their metabolite 2-ethylhexanol, and on the modeled exposure levels which are well-below any dose level at which an adverse effect is expected, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- (CAS Reg. No. 330980–61–5) and [alpha]-D-glucopyranoside, 2-ethylhexyl (CAS Reg. No. 125590–73–0). EPA finds that establishing exemptions from the requirement of a tolerance for [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- (CAS Reg. No. 330980–61–5)and [alpha]-D-glucopyranoside, 2-ethylhexyl (CAS Reg. No. 125590–73–0) will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect . . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing tolerances or tolerance exemptions for alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- and [alpha]-D-glucopyranoside, 2-ethylhexyl nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Accordingly, two exemptions from the requirement for a tolerance are established for [alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- (CAS Reg. No. 330980–61–5) and [alpha]-D-glucopyranoside, 2-ethylhexyl (CAS Reg. No. 125590–73–0).

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0166 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 14, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14 St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2002–0166, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy

of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2005

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920 the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used preharvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	*	* *
[alpha]-D-glucopyranoside, 2-ethylhexyl 6-O-[alpha]-D glucopyranosyl- (CAS Reg. No. 330980–61–5)	.....	Surfactant
* * * *	*	* *
[alpha]-D-glucopyranoside, 2-ethylhexyl (CAS Reg. No. 125590–73–0)	.....	Surfactant
* * * *	*	* *

* * * * *

[FR Doc. 05–18244 Filed 9–13–05; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0362; FRL–7729–7]

Alkyl (C_{10}–C_{16}) Polyglycosides; Exemptions from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes two exemptions from the requirement of a tolerance for residues of alkyl (C_{10}–C_{16}) polyglycosides also known as D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides when used as an inert ingredient in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals. Cognis Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides.

DATES: This regulation is effective September 14, 2005. Objections and requests for hearings must be received on or before November 14, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2003–0362. 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: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing 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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Documents and Other Related Information?

In addition to using EDOCKET at (*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 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of December 10, 2003 (68 FR 68908) (FRL–7335–5), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 4E4332) by Cognis Corporation, 490 Este Avenue, Cincinnati, OH 45232. That notice included a summary of the petition prepared by the petitioner.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of alkyl (C_{10}–C_{16}) polyglycosides or polyglucosides, also known as D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides (CAS Reg. No. 110615–47–9) when used as an inert ingredient in pesticide products. There were no comments received in response to the notice of filing.

The Agency has determined that the use of D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides (CAS Reg. No. 110615–47–9) in a pesticide product is as a surfactant.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not

intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The information submitted by the petitioner for review and evaluation included information on toxicity studies performed on alkyl (C_8–C_{10}) polyglycosides, and alkyl (C_{12}–C_{14}) polyglycosides. The actual substance used for each test is noted below.

An alkyl polyglycoside is created by combining glucose and an alcohol. Alkyl (C_8–C_{10}) polyglycosides and alkyl (C_{12}–C_{14}) polyglycosides are structurally-related to the alkyl (C_{10}–C_{16}) polyglycosides also known as D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides that is the subject of this final rule. These chemicals differ from one another only in the length of the alkyl chain. Given these structural similarities, these chemicals have similar toxicological characteristics.

Two types of data were submitted by the petitioner: Publicly-available information from open literature and complete toxicity studies. The results of the existing reviews in the publicly-available information were extracted from the submitted article. The complete toxicity studies included two mutagenicity studies, a subchronic 90 day study, and a developmental study. These studies were reviewed by the Department of Energy's Oakridge National Laboratory (ORNL), and the results of their review are presented below, noted by an asterisk (*).

A. Acute Toxicity

TABLE 1.—ACUTE TOXICITY STUDIES

Study/Species	Test Substance	Results
Acute oral toxicity/rat	C_8–C_{14}	Lethal Dose $(LD)_{50}$ > 5,000 milligrams/kilogram (mg/kg)
Acute oral toxicity/rat	C_{12}–C_{14}	LD_{50} > 5,000 mg/kg
Acute oral toxicity/rat	C_{12}–C_{14}	LD_{50} > 2,000 mg/kg
Acute dermal toxicity/rabbit	C_8–C_{10}	LD_{50} > 2,000 mg/kg
Acute dermal toxicity/rabbit	C_{12}–C_{14}	LD_{50} > 2,000 mg/kg
Primary eye irritation/rabbit	C_8–C_{10}	No irritating effects
Primary eye irritation/rabbit	C_{12}–C_{14}	Irritating to the eye
Primary dermal irritation/rabbit	C_8–C_{10}	No irritating effects
Primary dermal irritation/rabbit	C_{12}–C_{14}	No irritating effects at concentrations of up to 30% Irritating to the skin at concentrations greater than 30% to 100%.
Dermal sensitization/guinea pig	C_8–C_{10}	Not a dermal sensitizer
Dermal sensitization/guinea pig	C_{12}–C_{14}	Not a dermal sensitizer

TABLE 2.—MUTAGENICITY STUDIES

Type of Study	Test Substance	Results
Salmonella/Escherichia reverse gene mutation assay (Ames Test)*	C_{12}–C_{14}	Negative. No evidence of induced mutant colonies over background.
Salmonella typhimurium reverse (Ames Test)	Not specified	Did not induce reverse mutations in the tested strains of *Salmonella typhimurium* either with or without metabolic activation.
In vitro cytogenetic test in Chinese hamster V79 lung fibroblast	Not specified	Considered to be non-mutagenic.
In vitro mammalian cytogenetics assay*	C_{12}–C_{14}	Negative with and without activation.

*B. Repeated Dose Toxicity**

In a 90–day rat oral (gavage) toxicity study, alkyl (C_{12}–C_{14}) polyglucosides was administered at dose levels of 0, 250, 500, or 1,000 mg/kg/day for 5 days/week. An additional high-dose group was treated and then had a treatment-free period of 27 days before sacrifice.

There were no treatment-related adverse effects on body weight, body

weight gain, food consumption, hematological or clinical chemistry parameters or organ weights in any group. Adverse treatment-related effects were limited to the forestomach in both males and females receiving 500 or 1,000 mg/kg/day. After 27 days, it was observed that forestomach effects were reversible following the cessation of treatment, but not during treatment. Under the conditions of the study, the NOAEL (no observed adverse effect level) for alkyl (C_{12}–C_{14}) polyglucosides is 250 mg/kg/day. The LOAEL (lowest observed adverse effect level) is 500 mg/kg/day based on acanthosis, subepithelial inflammatory edema, and hyperkeratosis (females only) of the forestomach, which did not resolve during the treatment period.

*C. Developmental Toxicity**

In a rat developmental toxicity study, alkyl (C_{12}–C_{14}) polyglucosides was administered by gavage at dose levels of 0, 100, 300, and 1,000 mg/kg/day on gestation days 6 to 15. No treatment related maternal deaths, clinical signs, or decreases in mean body weight, weight gain, corrected weight gain or gross lesions were observed in this study. The maternal NOAEL is equal to or greater than 1,000 mg/kg/day. A LOAEL was not determined, but would be greater than 1,000 mg/kg/day.

No treatment-related effects were observed on any cesarean section parameter. No treatment-related external abnormalities, visceral abnormalities or skeletal malformations/variations, including the number of ossification sites were observed at any dose. The developmental NOAEL is equal to or greater than 1,000 mg/kg/day. A LOAEL was not determined, but would be greater than 1,000 mg/kg/day.

D. Metabolism

The petitioner submitted an article from open literature on metabolism studies in mice conducted with the structurally-related chemicals (octyl β-D-glucoside, dodecyl β-D-maltoside, and hexadecyl β-D-glucoside). The radiolabeled test material consisted of octyl β-D-[U-^{14}C]glucoside, [l-^{14}C]dodecyl β-D-maltoside and [l-^{14}C]hexadecyl β-D-glucoside). The treated animals were sacrificed two hours following administration of the test material. Radioactivity analysis indicated that most radioactivity was found in the stomach, intestine, liver and kidneys. The test material was hydrolyzed to form sugar and long chain alcohols, which were then processed in the mammalian body's pathways for carbohydrate and lipid metabolism. Most metabolites were excreted via urine, and appeared to be water soluble.

E. Conclusions

Acute toxicity studies on various chain lengths of alkyl polyglucosides indicate that D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is likely to be of low acute oral and dermal toxicity. However, based on the surrogate data, D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is likely to be an eye and dermal irritant when used at higher concentrations.

Metabolism studies on structurally-related chemicals indicate that the body can effectively metabolize D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides to water-soluble substances (predominantly sugar and various alcohols) that are readily excreted from the body.

In a 90–day rat oral (gavage) toxicity study, using alkyl (C^{12}–C^{14}) polyglucosides, the NOAEL (no observed adverse effect level) for alkyl (C^{12}–C^{14}) polyglucosides is 250 mg/kg/day. In a rat developmental toxicity study using alkyl (C^{12}–C^{14}) polyglucosides, both the maternal and developmental NOAELs are equal to or greater than 1000 mg/kg/day.

Mutagenicity studies on various chain lengths of alkyl polyglucosides indicate that D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is not likely to be mutagenic based on the two mutagenicity assays reviewed by the Agency and the two mutagenicity assays described in open literature.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

1. *Food*. The Agency has developed a screening-level model for predicting dietary exposure to inert ingredients. The results of this model are considered to over-estimate exposure to an inert ingredient in a pesticide product. The modeled chronic dietary exposure for the US population is 0.12 mg/kg/day. This is well-below any dose level at which an adverse effect is expected from exposure to D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides.

2. *Drinking water exposure*. EPA has estimated the fate and biodegradation properties of D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides using EPI-Suite. Screening-level tools such as EPI-Suite are deliberately designed to be easy-to-use, fast, and conservative in nature. (see *http://www.epa.gov/opptintr/exposure/docs/episuite.htm*). If modeled estimates do not indicate a level of concern, then higher-tiered modeling or measured data may not be needed. The modeled estimates indicate that a chemical substance such as D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is expected to degrade rapidly in the environment. Degradation begins within a matter of hours or days, with these primary degradation products including glucose and various alcohols which will continue to degrade. Ultimate degradation (to carbon dioxide and water) occurs in days to weeks. These glycoside compounds are soluble, non-volatile, and mobile. Leaching to ground water is likely in highly porous soils, but mitigated in other soils due to the rapid biodegradation. Volatilization from surface waters is very low. Migration to ground water drinking water sources is possible, but will be limited by the rapid primary degradation.

Based on values estimated using the EPI-Suite model, it is very unlikely that D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides will reach either ground or surface water, or bioaccumulate in the environment. This conclusion is based on its rather rapid primary degradation (estimated to be hours to days), and ultimate biodegradation to carbon dioxide and water. Significant concentrations of D-glucopyranose, oligomeric, C_{10}–C_{16}-

alkyl glycosides in sources of drinking water is very unlikely.

B. Other Non-Occupational Exposure

Various alkyl polyglucosides are used in glass cleaners and other household cleaning products, as rinse aids in dish washers, and in cleaning products used by the food industry.

VI. Cumulative Effects

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding for D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides. D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides does not appear to produce any toxic metabolite produced by other substances and the overall toxicity of this compound is very low. For the purposes of this tolerance action, therefore, EPA has not assumed that D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA concluded that a different margin of safety will be safe for infants and children.

D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is of low acute toxicity, and is readily metabolized in the mammalian body. In a developmental toxicity study reviewed and evaluated by ORNL for EPA, the developmental NOAEL is equal to or greater than 1,000 mg/kg/day. Due to the expected low oral toxicity, a safety factor analysis has not been used to assess the risk of D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VIII. Determination of Safety for U.S. Population, and Infants and Children

Based on the available toxicity data, EPA judges that D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides is a chemical of lower toxicity. Therefore, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides (CAS Reg. No. 110615–47–9). EPA finds that establishing an exemption from the requirement of a tolerance for D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides (CAS Reg. No. 110615–47–9) will be safe for the general population including infants and children.

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . .'' EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing tolerances or tolerance exemptions for D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Accordingly, an exemption from the requirement for a tolerance is established for D-glucopyranose, oligomeric, C_{10}–C_{16}-alkyl glycosides (CAS Reg. No. 110615-47-9).

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0362 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 14, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver

your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2003–0362, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 2, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910 the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemption from the requirement of a tolerance.

* * *

Inert ingredients	Limits	Uses
* * * *	*	* *
D-glucopyranose, oligomeric, C_{10-16}-alkyl glycosides (CAS Reg. No. 110615–47–9)	.....	Surfactant
* * * *	*	* *

* * * * *

■ 3. In § 180.930 the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemption from the requirement of a tolerance.

* * *

Inert ingredients	Limits	Uses
* * * *	*	* *
D-glucopyranose, oligomeric, C_{10-16}-alkyl glycosides (CAS Reg. No. 110615–47–9)	.....	Surfactant
* * * *	*	* *

* * * * *

[FR Doc. 05–18241 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7968–3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds seven new sites to the General Superfund Section of the NPL.

DATES: The effective date for this amendment to the NCP shall be October 14, 2005.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the ''Supplementary Information'' portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What are CERCLA and SARA?
B. What is the NCP?
C. What is the National Priorities List (NPL)?
D. How are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. Does the NPL Define the Boundaries of Sites?
G. How are Sites Removed from the NPL?
H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?
I. What is the Construction Completion List (CCL)?
II. Availability of Information to the Public
A. May I Review the Documents Relevant to this Final Rule?
B. What Documents are Available for Review at the Headquarters Docket?
C. What Documents are Available for Review at the Regional Dockets?
D. How Do I Access the Documents?
E. How May I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Site Name Change
C. What did EPA Do with the Public Comments It Received?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
1. What is Executive Order 12866?
2. Is this Final Rule Subject to Executive Order 12866 Review?
B. Paperwork Reduction Act
1. What is the Paperwork Reduction Act?
2. Does the Paperwork Reduction Act Apply to This Final Rule?
C. Regulatory Flexibility Act
1. What is the Regulatory Flexibility Act?
2. How Has EPA Complied with the Regulatory Flexibility Act?
D. Unfunded Mandates Reform Act
1. What is the Unfunded Mandates Reform Act (UMRA)?
2. Does UMRA Apply to This Final Rule?
E. Executive Order 13132: Federalism
1. What Is Executive Order 13132 and Is It Applicable to This Final Rule?
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
1. What is Executive Order 13175?
2. Does Executive Order 13175 Apply to This Final Rule?
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
1. What is Executive Order 13045?
2. Does Executive Order 13045 Apply to This Final Rule?
H. Executive Order 13211
1. What is Executive Order 13211?
2. Is this Rule Subject to Executive Order 13211?
I. National Technology Transfer and Advancement Act
1. What is the National Technology Transfer and Advancement Act?
2. Does the National Technology Transfer and Advancement Act Apply to this Final Rule?
J. Possible Changes to the Effective Date of the Rule
1. Has EPA Submitted This Rule to Congress and the General Accounting Office?
2. Could the Effective Date of This Final Rule Change?
3. What Could Cause a Change in the Effective Date of This Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an

imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutant or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination

has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket identification number; SFUND–2005–0006. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section IID.)

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center,

Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303/312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3097.

Denise Baker, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–4303.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following seven sites to the NPL; all to the General Superfund Section:

State	Site name	City/county
CO	Standard Mine	Gunnison National Forest.
GA	Peach Orchard Road PCE Ground Water Plume	Augusta.
NE	Garvey Elevator	Hastings.
NH	Clor-Alkali Facility (Former)	Berlin.
NC	Blue Ridge Plating	Arden.
PA	Jackson Ceramix	Falls Creek.
TX	Sandy Beach Road Ground Water Plume	Azle.

Three of the sites in this final rule received comments supporting listing: Standard Mine, Garvey Elevator and Sandy Beach Road Ground Water Plume (which was proposed as Pelican Bay Ground Water Plume. See Section B, ''Site Name Change'' below). These sites were all proposed on April 27, 2005 (70 FR 21718) with a 60-day comment period which ended on June 27, 2005. In addition, EPA received one comment for Sandy Beach Road Ground Water Plume expressing concern about the site's impact on their family's health and stating that the temporary filtration system installed by the State of Texas was inadequate. The commenter urged EPA to find a fair and quick resolution to the problem. None of these comments affect the HRS score. All other sites in this rule received no comments.

B. Site Name Change

The Sandy Beach Road Ground Water Plume in Azle, Texas, was proposed to the NPL under a different name. The former name was Pelican Bay Ground Water Plume (see Proposed Rule at 70 FR 21718, April 27, 2005). EPA believes the new name, Sandy Beach Road Ground Water Plume, more accurately identifies the site.

C. What Did EPA Do With the Public Comments It Received?

All seven sites were proposed to the NPL on April 27, 2005 (70 FR 21718). EPA received no substantive comments or only comments supporting the listing of the seven sites and therefore, EPA is placing them on the NPL at this time. The comments supporting the listing of the sites are contained in the Headquarters Docket and are also listed in EPA's electronic public docket and comment system at *http://www.epa.gov/edocket/* using the SFUND–2005–0006 identification number.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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

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

C. Regulatory Flexibility Act

1. What Is the 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 flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

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

2. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132 and Is It Applicable to This Final Rule?

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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has 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, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

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

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

1. What Is Executive Order 13045?

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

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211

1. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

2. Is This Rule Subject to Executive Order 13211?

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

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless 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.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Possible Changes to the Effective Date of the Rule

1. Has EPA Submitted This Rule to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 7, 2005.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes[a]
*	*	*	*
CO	Standard Mine	Gunnison National Forest	
*	*	*	*
GA	Peach Orchard Road PCE Ground Water Plume	Augusta	
*	*	*	*
NC	Blue Ridge Plating	Arden	
*	*	*	*
NE	Garvey Elevator	Hastings	
*	*	*	*
NH	Chlor-Alkali Facility (Former)	Berlin	
*	*	*	*
PA	Jackson Ceramix	Falls Creek	
*	*	*	*
TX	Sandy Beach Road Ground Water Plume	Azle	

TABLE 1.—GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county	Notes[a]
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 05–18235 Filed 9–13–05; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 160

[CMS–0010–IFC]

RIN 0938–AM63

Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings—Extension of Expiration Date

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: An interim final rule establishing procedures for the imposition, by the Secretary of Health and Human Services, of civil money penalties on entities that violate standards adopted by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was published on April 17, 2003. The interim final rule expires on September 16, 2005. This regulatory action extends the expiration date to March 16, 2006 to avoid the disruption of ongoing enforcement actions while HHS completes with rulemaking to develop a more comprehensive enforcement rule.

DATES: Effective September 14, 2005, the expiration date of 45 CFR part 160, subpart E is extended from September 16, 2005, to March 16, 2006.

FOR FURTHER INFORMATION CONTACT: Carol Conrad, (202) 690–1840.

SUPPLEMENTARY INFORMATION:

I. Background

On April 17, 2003, the Secretary of Health and Human Services published an interim final rule with request for comments. 68 FR 18895. The interim final rule adopted rules of procedure for the imposition by the Department of Health and Human Services (HHS) of civil money penalties on entities that violate standards and requirements adopted by HHS under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191. These rules are codified at 45 CFR part 160, subpart E (subpart E).

As corrected at 68 FR 22453 (April 28, 2003), subpart E was scheduled to expire on September 16, 2004. On September 15, 2004, HHS published a final rule extending the expiration date for one year, to September 16, 2005. 69 FR 55515. The final rule extended the original expiration date to avoid disruption of ongoing enforcement actions while HHS undertook a rulemaking to propose complete procedural and substantive provisions for the enforcement of the HIPAA rules through the imposition of civil money penalties, which would supersede subpart E.

On April 18, 2005, HHS published a notice of proposed rulemaking proposing this complete set of enforcement provisions. 70 FR 20224. The public comment period on the proposed rules closed on June 17, 2005. HHS is currently considering the public comments received, but will not be able to issue the final rule by September 16, 2005. Thus, in order to preserve the status quo with respect to enforcement during the pendency of the rulemaking, HHS is extending the expiration date of subpart E for an additional six months, to March 16, 2006.

II. Procedural Requirements

A. Determination To Issue Final Rule Extending Expiration Date Without Notice and Comment, To Be Effective in Less Than 30 Days

As noted, HHS has proposed a rule to supersede subpart E. However, this rulemaking will not be completed by September 16, 2005, when the interim final rule that adopted subpart E is scheduled to expire. The resulting hiatus in the procedures for civil money penalty enforcement actions could create confusion for both the public and HHS with respect to enforcement during this period. Thus, HHS hereby extends the expiration date of subpart E to March 16, 2006. This action is being taken under HHS's authority at 42 U.S.C. 1302(a) and 1320d–6.

Notwithstanding this extension, HHS fully expects to issue the final rule that will result from the pending rulemaking as soon as possible. However, the six-month extension should provide HHS with a period sufficient to avoid another extension, should unexpected circumstances delay the regulatory development process.

The Administrative Procedure Act generally requires agencies to provide advance notice and an opportunity to comment on agency rulemakings. However, there are certain exceptions to this requirement. As the preamble to the April 17, 2003 interim final rule explained, subpart B sets out—

> The procedures for provision by the agency of the statutorily required notice and hearing and procedures for issuing administrative subpoenas. Such provisions are exempted from the requirement for notice-and-comment rulemaking under the ''rules of agency * * * procedure, or practice'' exemption at 5 U.S.C. 553(b)(3)(A).

68 FR 18897. Since this regulatory action does no more than extend the effectiveness of a rule that itself was not required to be issued through notice-and-comment rulemaking, the extension of the rule likewise comes within the exemption of 5 U.S.C. 553(b)(3)(A). Accordingly, we do not request comment on the extension.

We have also determined that good cause exists to waive the requirement of publication 30 days in advance of the rule's effective date under 5 U.S.C. 553(d)(3). Since subpart E is already in effect, no useful purpose would be served in delaying the effective date of this action, as those entities who are subject to subpart E are already on notice of its terms. Making this extension effective on less than 30 days notice accordingly will not impose a burden upon anyone. In addition, to the extent that a delayed effective date occasioned a hiatus in the effectiveness of subpart E, it could cause the confusion that the extension seeks to avoid. Accordingly, we find good cause under 5 U.S.C. 553(d)(3) for not delaying the effective date of this action.

B. Review Under Procedural Statutes and Executive Orders

We have reviewed this final rule under the following statutes and executive orders governing rulemaking procedures: The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 13258; and Executive Order 13132 (Federalism). Since this rule merely extends the expiration date of subpart E, the information in the compliance statements that we published on April 17, 2003 with the existing rule continues to apply.

List of Subjects in 45 CFR Part 160

Administrative practice and procedure, Computer technology, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medical research, Medicare, Penalties, Privacy, Reporting and record keeping requirements, Security.

Dated: September 7, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–18254 Filed 9–13–05; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67 and CG Docket No. 03–123; FCC 05–141]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document, the Commission concludes that *two-line* captioned telephone service is a type of telecommunications relay service (TRS) eligible for compensation from the Interstate TRS Fund. The Commission also approves the National Exchange Carrier Association, Inc. (NECA), the Interstate TRS Fund Administrator, proposed allocation methodology for determining the number of *inbound two-line* captioned telephone minutes that should be compensated from the Interstate TRS Fund. Also in this document, the Commission seeks approval from the Office of Management and Budget (OMB) for any Paperwork Reduction Act (PRA) burdens contained in this document that will modify OMB Control No. 3060–1053 to have TRS providers offering *two-line* captioned telephone service along with TRS providers offering *one-line* captioned telephone service file annual reports with the Commission.

DATES: Effective October 14, 2005. Written comments on the PRA modified information collection requirements must be submitted by the general public, Office of Management and Budget (OMB), and other interested parties on or before November 14, 2005.

ADDRESSES: You may submit PRA comments identified by [CG Docket No. 03–123 and/or OMB Control Number 3060–1053], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to Leslie Smith at *Leslie.Smith@fcc.gov* and to Kristy L. LaLonde at *Kristy_L.LaLonde@omb.eop.gov.* Please include the docket number and/or OMB Control number in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail *Thomas.Chandler@fcc.gov.* For additional information concerning the PRA information collection requirements contained in the document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This *Order* contains modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding. This is a summary of the Commission's *Order,* adopted July 14, 2005, released July 19, 2005. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The full text of the *Order* and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Order* and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This *Order* can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Paperwork Reduction Act

The *Order* contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Order* as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Public and agency comments are due November 14, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, the Commission has assessed the effects

of its determination that *two-line* captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund, and finds that such action will not affect businesses with fewer than 25 employees.

Synopsis

One-Line and Two-Line Captioned Telephone Service

In the August 2003 *Captioned Telephone Declaratory Ruling,* the Commission concluded that captioned telephone Voice Carry Over (VCO) service is a type of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with Section 225 of the Communications Act. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Declaratory Ruling, 18 FCC Rcd 16121, August 1, 2003, published at 68 FR 55898, September 29, 2003, (*Captioned Telephone Declaratory Ruling*) recognizing captioned telephone service as a form of telecommunications relay service (TRS). Captioned telephone service uses a special telephone that has a text display. It permits, on one standard telephone line, the user—typically someone who has the ability to speak and some residual hearing—to both listen to what is said over the telephone and simultaneously read captions of what the other person is saying. A communications assistant (CA) using specially developed voice recognition technology generates the captions. No typing is involved. The *Captioned Telephone Declaratory Ruling* permits providers of interstate captioned telephone service to be compensated from the Interstate TRS Fund.

To use *one-line* captioned telephone service, the captioned telephone user dials the number of the person she wishes to call. Unlike with other forms of TRS, the user does not dial the number of a TRS provider (or the 711 access number). Although the user has dialed the number of the other party, the captioned telephone automatically calls a captioned telephone CA at a TRS facility. The TRS provider, in turn, calls the number of the called party, and all three parties (the captioned telephone user, the CA, and the called party) are connected. Unlike ''traditional'' TRS, where the CA would type what the called party says, the CA instead repeats or re-voices what the called party says and voice recognition technology automatically transcribes the CA's voice into text, which is then transmitted directly to the user and displayed on the captioned telephone. As a result, the captions appear on the captioned telephone at nearly the same time the user hears the called party's spoken words. Throughout the call the CA is completely transparent and does not participate in the call by voicing any part of the conversation; there is no interaction with the CA by either party to the call. Calls may be placed to captioned telephone users via a provider's toll free access number. When such an ''inbound'' captioned telephone call is made, the caller is prompted by a recording to enter the number he or she wishes to call, and the call is automatically processed.

The *Captioned Telephone Declaratory Ruling* did not address two-line captioned telephone service, and Petitioners now seek clarification that this type of captioned telephone service is also a type of TRS eligible for compensation from the Interstate TRS Fund. *See* Ultratec, Inc., Sprint Corporation, and Hamilton Relay, Inc., *Request for Clarification,* CC Docket No. 98–67 and CG Docket No. 03–123, filed December 7, 2004 (*Ultratec Petition*). The Commission refers to Ultratec, Inc., Sprint Corporation, and Hamilton Relay, Inc. as Petitioners). As Petitioners explain, two-line captioned telephone service requires the user to have two standard telephone lines connected to a captioned telephone. *See, e.g., Ultratec Petition* at 2. The first line is set up as the user's primary telephone line, and the second line transmits the captions from the captioned telephone relay service. When a two-line captioned telephone user places an outbound call, he or she dials the number of the party he or she wants to call on the first line, in the same way that a voice telephone call is made to the called party. An outbound call occurs when a captioned telephone user initiates (dials) a call from his or her captioned telephone hardware device. When this call is being made, the two-line captioned telephone simultaneously connects to the captioned telephone relay service on the second line. When this connection is made, the two-line captioned telephone takes the voice of the party who is called via the first line and sends it to the captioned telephone relay provider over the second line. As with one-line captioned telephone, the captioned telephone CA then re-voices everything that is said by the called party. Voice recognition technology transcribes what the CA says into text, and sends captions back on the second line to the text display on the two-line captioned telephone. In short, with one-line captioned telephone service the outbound call goes through the captioned telephone service provider to be connected to the called party; with two-line captioned telephone service, the primary telephone line links the calling and called parties directly, and the captioned telephone service is brought in on a second line.

For inbound calls to the two-line captioned telephone user, the calling party simply dials the telephone number of the person he or she wants to call. An inbound call occurs when a captioned telephone user receives a call from a voice telephone caller. The call goes directly to the two-line captioned telephone in the same way a call would come in to any traditional telephone. When the captioned telephone user answers the call, his or her two-line captioned telephone automatically calls the captioned telephone relay service on the second telephone line, and the call then proceeds in the same manner as an outbound two-line captioned telephone call. *Ultratec Petition* at 3.

Petitioners cite several benefits that two-line captioned telephone service offers that are not available with one-line captioned telephone service. First, because a two-line captioned telephone allows direct inbound dialing, no special ''relay'' numbers are needed and users can give out their own telephone numbers to persons who may want to call them, not the number of a captioned telephone relay service provider. Second, because two-line captioned telephone service directly connects both parties to the call on the same telephone line and adds the captioned telephone relay service on a second telephone line, it allows the user access to other telephone network features available to voice telephone users such as *69 to receive information about the last incoming call and to return such call, call waiting, and call forwarding. In addition, and for the same reason, this service makes it possible for users to directly access 9–1–1 emergency services in the same way that hearing telephone users access these services (while simultaneously receiving captions back on the second telephone line). Two-line captioned telephone service also allows two or more persons to be on the call at the same time *e.g.*, by using another telephone extension in the same house because the primary connection is a direct voice connection, just like with any other call. In contrast, one-line captioned telephone service uses a single connection to carry both voice traffic and captioning information, which are encoded into a single data stream. This data stream would be unintelligible to a user who picks up a

separate phone connected to the line on which one-line captioned telephone service is being used. Finally, unlike with one-line captioned telephone service, the captions service can be added to a call at any time during the call even after the call is in progress by engaging the second line which is the call to the captioned telephone service.

Jurisdictional Separation of Costs and Inbound Two-Line Captioned Telephone Service

Petitioners and NECA acknowledge that although providers can readily determine which one-line captioned telephone calls are interstate and which are intrastate for reimbursement purposes, and can also make that determination for outbound two-line captioned telephone calls, they cannot do so for inbound two-line captioned telephone calls. *See* the National Exchange Carrier Association, Inc., CC Docket No. 98–67 and CG Docket No. 03–123, Petition for Declaratory Ruling, filed December 10, 2004 (NECA Petition). Therefore, NECA proposes that we adopt an allocation methodology for the jurisdictional compensation of the inbound two-line captioned telephone calls; *i.e.*, for determining which such calls shall be compensated by a state, and which such calls shall be compensated from the Interstate TRS Fund.

As NECA explains, for one-line captioned telephone service the relay center is able to determine whether each call is intrastate or interstate because such calls go through the relay center, and therefore the center can determine where the call originates from the automatic number identification (ANI) of the caller's telephone number and where it ends from the called party's telephone number. NECA Petition at 1–2; *see also Ultratec Petition* at 6. In other words, the TRS providers (*i.e.*, call center) captures network information from both the caller's and the called person's telephone numbers. This applies to both inbound and outbound one-line captioned telephone calls. For outbound two-line captioned telephone calls, the process of determining the jurisdictional nature of the call is the same as for one-line captioned telephone service. *NECA Petition* at 2. The telephone captures the number of the called party that is dialed, and automatically forwards that number to the relay center through the second line. *See Ultratec Petition* at 6. As a result, in this situation the call center receives from the calling party the user of the two-line captioned telephone the telephone number of both the calling and called parties. For inbound two-line captioned telephone calls, however, the relay center is incapable of determining the location of the calling (*i.e.*, originating) party to the call. This is because the originating inbound caller calls the captioned telephone user directly, and the captioned telephone does not receive information about the calling party that can be forwarded to the relay center when the captioned telephone calls the relay center on the second line. *NECA Petition* at 2; *Ultratec Petition* at 7. As a result, the relay center does not receive the calling party's ANI, and therefore cannot determine the jurisdictional nature of the call in order to report and bill either the state or the Interstate TRS Fund for the call. *NECA Petition* at 2; *Ultratec Petition* at 7. Petitioners suggest that although Caller ID might provide the necessary information, ''this would not offer a consistent solution because it is often blocked or unavailable,'' and also note that Caller ID is a fee-based service that may put an unfair additional financial burden on the user. According to NECA, presently states are compensating providers of inbound two-line captioned telephone calls for all such calls.

The problem of determining the jurisdictional nature of inbound two-line captioned telephone calls was addressed at the Interstate TRS Advisory Council's (Council) April 2004 and September 2004 meetings. NECA, on behalf of the Council, now requests that the Commission adopt an allocation methodology to determine the portion of such calls that will be considered intrastate, and the portion that will be considered interstate. NECA notes that an allocation methodology has been approved and is currently used for toll free (800) and pay-per-call (900) number calls because providers cannot determine the jurisdictional nature of such calls. In those cases, the share of minutes compensable from the Interstate TRS Fund is based on the relationship of interstate and international TRS minutes to intrastate toll, interstate, and international TRS minutes. Because this allocation is a means of estimating the percentage of 800 and 900 number calls that are interstate, and 800 and 900 number calls are not local calls, only intrastate calls that are toll calls, and not *all* intrastate calls, are included in the denominator of this calculation. NECA requests that a similar interstate allocation factor be calculated and applied to all inbound two-line captioned telephone calls. However, for such calls NECA proposes that the allocation factor be based on the relationship between the number of interstate and international traditional TRS minutes to the total number of all traditional TRS minutes (*i.e.*, including *all* intrastate minutes, as well as all interstate and international minutes). In other words, although NECA proposes that the same allocation methodology used for 800 and 900 calls also be used to determine an allocation factor for inbound two-line captioned telephone calls, the allocation factor applied would not be the same for 800/900 calls and for inbound two-line captioned telephone calls because the denominator would not be the same. NECA notes that based on this proposed allocation methodology, the allocation factor for the 2004–2005 Fund year (using the traditional TRS data projected for the calendar years 2004 and 2005) would be 10 percent. Pursuant to this methodology and allocation factor, 10% of the two-line inbound captioned telephone minutes would be allocated to the interstate jurisdiction for payment from the Interstate TRS Fund, while the remaining 90% of the two-line inbound captioned telephone minutes would continue to be billed to the intrastate jurisdiction. On December 16, 2004, the *Ultratec Petition* and *NECA Petition* were placed on Public Notice. *Request for Clarification Filed by Ultratec, Inc., Sprint Corporation and Hamilton Relay, Inc. and Petition for Declaratory Ruling Filed by The National Exchange Carrier Association, Inc. Concerning Two-Line Captioned Telephone Voice Carry Over, A Form of Telecommunications Relay Service,* CC Docket No. 98–67, CG Docket No. 03–12, Public Notice (December 16, 2004) (*Two-line Captioned Telephone Public Notice*). Comments were filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (California Coalition Comments) (January 6, 2005) and Telecommunications for the Deaf, Inc. (TDI Comments) (January 7, 2005). Ultratec, Inc. (Ultratec) filed reply comments to the NECA Petition on January 18, 2005 (Ultratec Reply Comments). All commenting parties support both petitions.

Discussion

Two-line Captioned Telephone Service as a Type of TRS

The Commission concludes that two-line captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund. As noted above, in the August 2003 *Captioned Telephone Declaratory Ruling* the Commission concluded that one-line captioned telephone is a type of TRS eligible for compensation from the Interstate TRS Fund. The record reflects that two-line captioned telephone

service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features, noted above. *Ultratec Petition* at 2–6; *see also* California Coalition Comments at 1–3; TDI Comments at 1–2. These additional features '' including direct inbound dialing and the ability to use call waiting, call forwarding, directly call 911, and have two or more persons on the call at the same time '' represent another step forward toward functional equivalency. Therefore, the Commission clarifies that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund. In reaching this conclusion, the Commission is mindful that Section 225 obligates the Commission to ensure that interstate and intrastate TRS are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States, and to ensure that the TRS regulations encourage the use of existing technology and do not discourage or impair the development of improved technology. 47 U.S.C. 225 (b)(1); 47 U.S.C. 225 (d)(2). The Commission also notes that no commenters oppose this conclusion.

Compensation from the Interstate TRS Fund

The Commission concludes that the same allocation methodology presently used for 800 and 900 number call minutes should be used for inbound two-line captioned telephone call minutes. In enacting Section 225, Congress provided for the compensation of TRS providers for their costs of providing TRS. *See* 47 U.S.C. 225(d)(1)(D). The users of TRS cannot be required to pay for the service; *see also Captioned Telephone Declaratory Ruling.* This cost recovery regime distinguishes between interstate and intrastate TRS: the providers of interstate TRS are compensated from the Interstate TRS Fund, and providers of intrastate TRS are compensated from the states. *See, e.g.*, 47 U.S.C. 225(c) and (d)(3); 47 CFR 64.603, 64.604(c)(5). Presently the costs of providing certain types of intrastate TRS are compensated from the Interstate TRS Fund, including VRS and IP Relay. *See Captioned Telephone Declaratory Ruling.* As noted above, however, with inbound two-line captioned telephone calls, there is currently no way for the provider to determine the jurisdictional nature of the call. As a result, the provider cannot determine which calls should be reported and billed to the states, and which should be reported and billed to the Interstate TRS Fund. In these circumstances, NECA has proposed an allocation methodology by which an interstate allocation factor is calculated and applied to all inbound two-line captioned telephone minutes. NECA notes that the impact of the use of its allocation methodology on the fund would be minimal. *NECA Petition* at 4. NECA states that although captioned telephone minutes are growing, they are not a significant portion of the TRS provider payments (less than 1% of the monthly fund requirements), and that inbound captioned telephone minutes are in turn a small portion of total captioned telephone minutes. No party filed an alternate proposal or an opposition to NECA's proposal.

The Commission agrees with NECA's recommendation that the same allocation methodology presently used for 800 and 900 number call minutes should be used for inbound two-line captioned telephone call minutes. Application of this methodology will ensure that the Interstate TRS Fund compensates providers of inbound two-line captioned telephone calls only for such minutes reasonably estimated to be interstate in nature. As a result, the Commission adopts NECA's proposed methodology and instructs the Interstate TRS Fund Administrator to determine and apply, on an annual basis, an allocation factor for inbound two-line captioned telephone calls that is based on the relationship between interstate and international traditional TRS calls and all intrastate, interstate, and international traditional TRS calls. As with the determination of the allocation factor for 800 and 900 number calls, the Fund Administrator will generally use the providers' projected minutes of use for traditional TRS. This allocation factor, along with the allocation factor for 800 and 900 number calls, shall be reflected in the Interstate TRS Fund Administrator's annual filing with the Commission proposing the TRS compensation rates for the upcoming TRS Fund year. Upon release of the Order, NECA shall determine an allocation factor for inbound two-line captioned telephone calls as specified herein and submit it to the Commission. After Public Notice and an opportunity for comments, the Commission will issue an order approving or modifying the proposed factor. Finally, the Commission notes that Ultratec suggests that we monitor the usage data of one-line and two-line captioned telephone service to ensure that any allocation methodology adopted accurately reflects the usage of two-line captioned telephone service. Utratec Reply Comments at 4–5. The Commission will do so as part of its general oversight of the regulation and compensation of TRS.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law Number 104–121, Title II, 110 Statute 857 (1996). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Nationwide, there are approximately 1.6 million small organizations. Independent Sector, the New Nonprofit Almanac & Desk Reference (2002).

The Order addresses two petitions concerning the regulation and compensation of captioned telephone service, a form of telecommunications relay service (TRS). As noted in the Order, in August 2003, the Commission concluded that captioned telephone Voice Carry Over (VCO) service is a type of TRS, and that eligible providers of such services are eligible to recover their costs in accordance with Section 225 of the Communications Act. *See Captioned Telephone Declaratory Ruling.* The *Captioned Telephone*

Declaratory Ruling did not address two-line captioned telephone service, and petitioners now seek clarification that this type of captioned telephone service is also a type of TRS eligible for compensation from the Interstate TRS Fund.

As noted in the Order, the record reflects that two-line captioned telephone service is simply a variation of captioned telephone service that offers the same functionality while also offering the user additional features. These additional features represent another step forward toward functional equivalency. Therefore, in the Order the Commission clarifies that two-line captioned telephone service, like one-line captioned telephone service, is a type of TRS eligible for compensation from the Interstate TRS Fund.

The Commission does not believe this clarification will have a significant economic impact; however, in the event that it does, the Commission also notes that there are not a substantial number of small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110 changed from 513310 in October 2002. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 issued October 2000. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more''. Currently, only three providers are providing captioned telephone service and being compensated from the Interstate TRS Fund: CapTel, Inc., Hamilton and Sprint. The Commission expects that only one of the providers noted above may be a small entity under the SBA's small business size standard. In addition, the Interstate Fund Administrator is the only entity that will be required to pay to eligible providers of two-line captioned telephone service the costs of providing interstate service. The Commission will send a copy of the Order, including a copy of this Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. (5 U.S.C. 605(b)).

Congressional Review Act

The Commission will send a copy of the Order in a report to Congress and the Governmental Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, this Order is hereby *adopted.*

The Request for Clarification submitted by Ultratec, Inc, Sprint Corporation, and Hamilton Relay, Inc., *is granted* to the extent indicated herein.

The Petition for Declaratory Ruling filed by the National Exchange Carrier Association, Inc. (NECA), on behalf of the Interstate Telecommunications Relay Service Advisory Council, *is granted* to the extend indicated herein.

The Order shall be effective October 14, 2005.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center shall send a copy of the Order, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18029 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 05–2066]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In this document, the Consumer & Governmental Affairs Bureau (the Bureau) clarifies under delegated authority, that telecommunications relay service (TRS) providers offering free or discount long distance service to TRS consumers as an incentive to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an impermissible financial incentive in violation of the *Financial Incentives Declaratory Ruling.* TRS providers in violation of the *Financial Incentives Declaratory Ruling* will be ineligible for compensation from the Interstate TRS Fund.

DATES: Effective January 12, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission document DA 05–2066, adopted July 27, 2005, released July 28, in CG Docket No. 03–123. This document does not contain new or modified information collections requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any New or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *sec* 44 U.S.C. 3506(c)(4). Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI at their Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Synopsis

On January 26, 2005, the Bureau, under delegated authority, issued the *Financial Incentives Declaratory Ruling* concluding that any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates section 225 of the Communications Act. *See Telecommunications Relay Services and*

Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities, CC Docket No. 98–67, CG Docket No. 03–123, Declaratory Ruling, 20 FCC Rcd 1466–1468, paragraph 4, released January 26, 2005, published at 70 FR 9239, February 25, 2005, (*Financial Incentives Declaratory Ruling*). The Bureau explained that ''in view of the intent and nature of section 225 of the Communications Act, and the obligation placed on entities providing voice telephone services to also offer TRS as an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system, the Bureau interprets section 225 of the Communications Act and the implementing regulations to prohibit a TRS provider's use of any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer's use of their TRS service.'' The Bureau further explained that because the Interstate TRS Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make. The Bureau therefore concluded that, effective March 1, 2005, any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund.

The *Financial Incentives Declaratory Ruling* was in response to a TRS provider's customer loyalty program which offered the provider's customers the opportunity to have their DSL or cable modem bill reimbursed by the provider through the accumulation of points based on minutes of use of the provider's TRS service. Sprint Corporation (Sprint) sought clarification whether its free long distance service promotion violated the prohibition against TRS financial incentives set forth in the *Financial Incentives Declaratory Ruling. See* Letter from Spring to Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs, Federal Communications Commission, dated February 7, 2005, regarding *Declaratory Ruling* (DA 05–140) issued January 26, 2005 in CC Docket No. 98–67 and CG Docket No. 03–123 (*Ex Parte* Communication) (*Sprint Letter*).

As Sprint explained, it provides traditional TRS in a state (California) that has more than one provider of this service (*i.e.,* a ''multi-vendor'') state. *See Sprint Letter* at 1–2. Therefore, a TRS consumer in that state can choose which available TRS provider he or she wants to handle his or her TRC call. To give the consumers an incentive to use Sprint's relay service, Sprint adopted a promotion whereby long distance calls would be free to consumers who select Sprint as their provider of both relay and long distance services. *See Sprint Letter* at 1. Providers of traditional TRS may not charge consumers for the cost of the TRS service; the may, however, charge the consumer for long distance service. The Commission's rules require providers of traditional TRS to offer their consumers access to the consumer's long distance carrier of choice. *See* 47 CFR 64.604(b)(3). In other words, TRS consumers must be afforded the same opportunity given to non-TRS consumers to use whichever long distance service they choose when making a long distance call. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, CG Docket No. 03–123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12375, 12412–12415, paragraphs 54–61, released June 17, 2003, published at 69 FR 53346, September 1, 2004, (*2004 TRS Report & Order*). (The Bureau notes that the carrier of choice rule is presently waived for the provision of Internet Protocol Relay Service (IP Relay) and Video Relay Service (VRS). *See, e.g., 2004 TRS Report & Order,* 19 FCC Rcd 12594, Appendix E.) Sprint asserted that is free long distance program is distinguishable from the kind of financial incentive programs prohibited by the *Financial Incentives Declaratory Ruling,* and therefore should be permissible. Sprint asserted that, unlike customer loyalty programs, the free long distance program does not provide any benefits independent of the calls themselves, and therefore there is no incentive to make unnecessary TRS calls. Sprint also noted that discounts from standard rates have long been characteristic of the super-competitive long distance market. Finally, Sprint noted that even if the Bureau found that Sprint's free long distance program violated the *Financial Incentives Declaratory Ruling,* the Bureau should make clear that the prohibition applies only to *inter*state long distance service, and not *intra*state long distance service. *See Sprint Letter* at 2, note 1. On March 11, 2005, Nordia, Inc., another provider of traditional TRS in California, addressed by letter the provision of free long distance service along with traditional TRS service. *See* letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs, Federal Communications Commission, dated March 11, 2005, regarding Declaratory Ruling Regarding Hands-On Video Relay Services, Inc., CC Docket No. 98–67 and CG Docket No. 03–123.

Discussion

The Bureau finds that offering free or discount long distance service (subject to the exceptions noted below) to TRS consumers as an incentive to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an impermissible financial incentive in violation of the *Financial Incentive Declaratory Ruling.* When customers receive either free or heavily discounted long distance service, they have an incentive to make more or longer calls than they would make in the absence of such a program. Consequently, the Interstate TRS Fund, which compensates providers on a per-minute basis, is bill for minutes the customers might not have generated but for the incentive program. Although Sprint raises this issue in the context of a multi-vendor state, we note that our conclusion applies to TRS providers whether or not they are the only provider in a state. Free or discount long distance programs for traditional TRS consumers run afoul of the Commission's financial incentives prohibition not because they might cause a consumer to select one provider's service instead of another provider's service, but because such programs may have the effect of causing a TRS consumer to make more or longer TRS calls than be or she would otherwise make.

This document shall be effective January 12, 2006. The record reflects that some providers may not be able to immediately change their automated billing system. *See* Letter from MCI to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 10, 2005, regarding CC Docket No. 98–67 and CG Docket No. 03–123 (indicating that MCI would need 45 days to comply with ruling proscribing free long distance); Letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disability Rights Office, Consumer & Governmental Affairs, Federal Communications Commission, dated June 16, 2005, regarding Nordia Billing for Interstate Calls (indicating company would require 9 to 12 months to implement billing system). The Bureau believes that 120 days is a reasonable time for providers to come into compliance.

There are, however, two important limitations to the Bureau's conclusion with respect to free or discount long distance service to TRS consumers. First, the *Financial Incentives Declaratory Ruling* and this document apply only with respect to free or discount *inter*state long distance service, not *intra*state long distance service. Second, the Bureau recognizes that provider have long offered discount long distance service to TRS consumers who use a TTY under the rationale that, given the nature of traditional TRS, it take substantially longer for parties to a traditional TRS call to have a conversation than it would for two hearing parties to have the same conversation. Therefore, providers have been permitted to offer discount long distance service to TRS consumers so, long as the discounts reasonably relate, under the functional equivalency principle, to equalizing the cost of the call based on the added length of a TRS call. The Bureau prohibits only those long distance discounts for TRS consumers that go beyond ensuring that the long distance service cost of the TRS call is equivalent to what that cost would have been for hearing parties. Programs directed at giving the consumer an incentive to make a TRS call in the first place, or to place a longer TRS call than consumer might otherwise make, are prohibited under this document.

Nothing in the *Financial Incentives Declaratory Ruling* or this document precludes interstate TRS providers that also offer long distance service from offering discounts to all of their consumer when the same discount applies to both voice and TRS calls. The Bureau addresses herein only the situation where TRS consumers, but not other consumers, are given free long distance service (or discount long distance service) as incentive for the consumer to use the particular TRS provider that also offer the long distance service, or to make more or longer TRS calls.

Ordering Clauses

Pursuant to the authority contained in section 225 of the communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141, 0.361, and 1.3 of the Communication Rules, 47 CFR 0.141, 0.361, 1.3, this document is hereby *adopted.*

Any TRS provider offering to TRS consumers financial incentives relating to free or discount long distance service, as set forth above, shall be eligible for compensation from the Interstate TRS Fund.

This document shall be effective January 12, 2006.

Federal Communications Commission.

Monica Desai,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–18250 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–386; FCC 05–29]

Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On June 2, 2005 (70 FR 32258), the Commission published a final rule in the **Federal Register**, which adopted new rules to facilitate the exchange of customer account information between Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs) and to establish carriers' responsibilities with respect to such exchanges. This document corrects the instances in the **Federal Register** which an IXC-initiated PIC *Order* is referred to as a *Report and Order*.

DATES: The rules in this document contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for these rules. Written comments by the public on the new and modified information collections are due October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), or e-mail *Lisa.Boehley@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document adopting new rules to facilitate the exchange of customer account information between Local Exchange Carriers (LECs) and Interexchange Carriers (IXCs). In the **Federal Register** document 05–10974 published on June 2, 2005 (70 FR 32258) make the following corrections:

1. On page 32259, under the Supplementary Information in the first column on line 30, PIC Report and Order is corrected to read as PIC Order and wherever it appears in the Supplementary Information.

2. In § 64.4002, the introductory text, paragraphs (a) introductory text, (b) introductory text, (b) (6), (c) introductory text; and (d) introductory text are corrected to read as follows:

§ 64.4002 Notification obligations of LECs.

To the extent that the information is reasonably available to a LEC, the LEC shall provide to an IXC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Order.

(a) *Customer-submitted PIC Order.* Upon receiving and processing a PIC selection submitted by a customer and placing the customer on the network of the customer's preferred interexchange carrier at the LEC's local switch, the LEC must notify the IXC of this event. The notification provided by the LEC to the IXC must contain all of the customer account information necessary to allow for proper billing of the customer by the IXC including but not limited to:

* * * * *

(b) *Confirmation of IXC-submitted PIC Order.* When a LEC has placed a customer on an IXC's network at the local switch in response to an IXC-submitted PIC Order, the LEC must send a confirmation to the submitting IXC. The confirmation provided by the LEC to the IXC must include:

* * * * *

(6) The carrier identification code of the submitting LEC. If the PIC Order at issue originally was submitted by an underlying IXC on behalf of a toll reseller, the confirmation provided by the LEC to the IXC must indicate, to the extent that this information is known, a statement indicating that the customer's PIC is a toll reseller.

(c) *Rejection of IXC-submitted PIC Order.* When a LEC rejects or otherwise does not act upon a PIC Report and Order submitted to it by an IXC, the LEC must notify the IXC and provide the reason(s) why the PIC Order could not be processed. The notification provided by the LEC to the IXC must state that it has rejected the IXC-submitted PIC Order and specify the reason(s) for the rejection (*e.g.*, due to a lack of information, incorrect information, or a PIC freeze on the customer's account). The notification must contain the identical data elements that were provided to the LEC in the original IXC-

submitted PIC Order (*i.e.*, mirror image of the original Order), unless otherwise specified by this subsection. If a LEC rejects an IXC-submitted PIC Order for a multi-line account (*i.e.*, the customer has selected the IXC as his PIC for two or more lines or terminals associated with his billing telephone number), the notification provided by the LEC rejecting that Order must explain the effect of the rejection with respect to each line (working telephone number or terminal) associated with the customer's billing telephone number. A LEC is not required to generate a line-specific or terminal-specific response, however, and may communicate the rejection at the billing telephone level, when the LEC is unable to process an entire Order, including all working telephone numbers and terminals associated with a particular billing telephone number. In addition, the notification must indicate the jurisdictional scope of the PIC Order rejection (*i.e.*, intraLATA and/or interLATA and/or international). If a LEC rejects a PIC Order because:

* * * * *

(d) *Customer contacts LEC or new IXC to cancel PIC.* When a LEC has removed at its local switch a presubscribed customer from an IXC's network, either in response to a customer Order or upon receipt of a properly verified PIC Order submitted by another IXC, the LEC must notify the customer's former IXC of this event. The LEC must provide to the IXC the customer account information that is necessary to allow for proper final billing of the customer by the IXC including but not limited to:

* * * * *

3. In § 64.4003, the introductory text, (a) introductory text, (a) (2), (a) (3), (b) introductory text, (b) (2) and (b) (3) are corrected to read as follows:

§ 64.4003 Notification obligations of IXCs.

To the extent that the information is reasonably available to an IXC, the IXC shall provide to a LEC the customer account information described in this section consistent with § 64.4004. Nothing in this section shall prevent an IXC from providing additional customer account information to a LEC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC Order.

(a) *IXC-submitted PIC Order.* When a customer contacts an IXC to establish interexchange service on a presubscribed basis, the IXC selected must submit the customer's properly verified PIC Order (*see* 47 CFR 64.1120(a)) to the customer's LEC, instructing the LEC to install or change the PIC for the customer's line(s) to that IXC. The notification provided by the IXC to the LEC must contain all of the information necessary to properly execute the Order including but not limited to:

* * * * *

(2) The date of the IXC-submitted PIC Order;

(3) The jurisdictional scope of the PIC Order (*i.e,* intraLATA and/or interLATA and/or international); and

* * * * *

(b) *Customer contacts IXC to cancel PIC and to select no-PIC status.* When an end user customer contacts an IXC to discontinue interexchange service on a presubscribed basis, the IXC must confirm that it is the customer's desire to have no PIC and, if that is the case, the IXC must notify the customer's LEC. The IXC also is encouraged to instruct the customer to notify his LEC. An IXC may satisfy this requirement by establishing a three-way call with the customer and the customer's LEC to confirm that it is the customer's desire to have no PIC and, where appropriate, to provide the customer the opportunity to withdraw any PIC freeze that may be in place. The notification provided by the IXC to the LEC must contain the customer account information necessary to properly execute the cancellation Order including but not limited to:

* * * * *

(2) The date of the IXC-submitted PIC removal Order;

(3) The jurisdictional scope of the PIC removal Order (*i.e.*, intraLATA and/or interLATA and/or international); and

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18255 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2338; MB Docket No. 04–408, RM–11107]

Radio Broadcasting Services; Hawley and Munday, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Charles Crawford, the Audio Division allots Channel 269A at Hawley, Texas, as that community's first local aural transmission service. To accommodate the proposed Hawley allotment, Petitioner proposes to modify the site for vacant Channel 270C1 at Munday, Texas. *See* 69 FR 67882, November 22, 2004. Channel 269A is allotted at Hawley at Petitioner's requested site 9.8 kilometers (6.1 miles) southeast of the community at coordinates 32–32–30 NL and 99–45–00 WL. The site for Channel 270C1 at Munday can be modified to a site 34 kilometers (21.1 miles) north of the community at coordinates 33–44–53 NL and 99–42–14 WL.

DATES: Effective October 11, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–408 adopted August 24, 2005, and released August 26, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Hawley, Channel 269A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–18028 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050630174–5234–02; I.D. 062005B–X]

RIN 0648–AT08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 41

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment 41 (FW 41) to the Northeast (NE) Multispecies Fishery Management Plan (FMP), developed by the New England Fishery Management Council (Council), which expands participation in the existing Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) to all NE multispecies limited access days-at sea (DAS) vessels fishing with hook gear. This action also modifies some of the management measures currently applicable to the Georges Bank (GB) Cod Hook Sector (Sector) vessels when declared into the CA I Hook Gear Haddock SAP by including modification of the season, haddock total allowable catch (TAC), and restricting vessels to fishing only inside the SAP area on trips declared into the SAP. In addition, NMFS clarifies regulations pertaining to fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area. Specifically, during the time the SAP is open, eligible vessels can choose to fish in the SAP, and fish outside the SAP in the open areas of the Eastern U.S./Canada Area. This action is intended to mitigate the economic and social impacts resulting from Amendment 13 to the FMP and to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective October 14, 2005.

ADDRESSES: Copies of FW 41, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B-Mill 2, Newburyport, MA 01950.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html.*

Comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted in writing to NMFS (see **ADDRESSES**), or to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov*, or by fax at (202) 395–7285.

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

SUPPLEMENTARY INFORMATION:

Background

In order to increase the fishing effort on, and yield from, healthy stocks, Amendment 13 to the FMP created a structure that allows for development of programs to target healthy fish stocks using Category B DAS. Amendment 13 included four specific SAPs, only two of which were approved and implemented on May 1, 2004. The regulations implementing FW 40–A (69 FR 67780, November 19, 2004) also created opportunities to use Category B DAS, including the CA I Hook Gear Haddock SAP. However, due to insufficient controls on GB cod mortality, the measures for non-Sector vessels proposed in FW 40–A were found to be inconsistent with applicable law, and were thus disapproved. The purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. This special access program will help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

Management Measures

1. CA I Hook Gear Haddock SAP

Non-Sector Vessels

FW 41 modifies the CA I Hook Gear Haddock SAP by allowing access to this SAP when fishing under a B DAS (either Regular B or Reserve B) for vessels with a NE multispecies limited access DAS permit, provided the vessel fishes with demersal longline or tub trawl gear. In order to minimize the potential of a derby fishery, participation in the SAP for non-Sector vessels is restricted to a participation period of November 16 - December 31 for the 2005 fishing year, unless otherwise notified by NMFS. The participation period will alternate each year between Sector and non-Sector participants such that, in fishing year 2006, non-Sector vessels will be able to fish in this SAP during a participation period of October 1 - November 15. The currently approved haddock TAC of 1,000 mt for the SAP is divided evenly into two quota periods such that the haddock TAC for each quota period will be 500 mt. The SAP will be closed to all participants when the Administrator, Northeast Region, NMFS (Regional Administrator) projects that the haddock TAC (landings and discards) has been caught. The Regional Administrator may also adjust the start of the second participation period if the 500–mt haddock quota for the first participation period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500–mt quota for the second participation period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first participation period. Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program are prohibited from fishing in this SAP on the same trip.

In order to ensure that any catch of GB cod taken while using a Category B DAS does not threaten mortality objectives of Amendment 13, non-Sector vessels participating in the CA I Hook Gear Haddock SAP are allocated a portion of the GB cod incidental catch TAC. The GB cod incidental catch TACs are 50 percent, 34 percent, and 16 percent for the Regular B DAS Pilot Program, the Eastern U.S./Canada SAP, and the CA I Hook Gear Haddock SAP, respectively. Additionally, for the 2005 fishing year, the Regional Administrator may estimate any uncaught GB cod incidental catch TAC from the first quarter of the Regular B DAS Pilot Program and add that amount to the second quarter GB cod incidental catch TAC for the Regular B DAS Pilot Program. This action is necessary because the effective date of FW 41 (October 1, 2005) is after the start of the Eastern U.S./Canada Haddock SAP, and the first period for the Regular B DAS Pilot Program (i.e., May 1, 2005). This

action reduces the GB cod incidental catch TAC for the second period of the Regular B DAS Pilot Program by 15.5 mt, and re-allocates it to the CA I Hook Gear Haddock SAP. This figure, 15.5 mt, is equivalent to 16 percent of the GB cod incidental catch TAC at the beginning of the 2005 fishing year (97 mt). This inseason adjustment is only for the GB cod incidental catch TAC in the 2005 fishing year.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, any vessel intending to participate in this SAP is required to notify the NMFS Observer Program by September 1 of its intention to fish in the program that year. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP and to plan observer coverage accordingly. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by September 1, it will not be allowed to participate in the SAP during that fishing year. Because this is the first year of this SAP modification, and timing is not consistent with the September 1 notification date for the 2005 fishing year, all non-Sector vessels must notify the NMFS Observer Program of its intention to fish in the CA I Hook Gear Haddock SAP by October 24, 2005. In addition to this one-time annual notification, vessels are required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and are required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time and port of departure. The Regional Administrator retains the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

Non-Sector vessels participating in the SAP are required to use Category B (either Regular B or Reserve B) DAS only. Like the Sector vessels, all non-Sector vessels participating in this SAP are required to be equipped with an approved Vessel Monitoring System (VMS). Vessels are required to declare into the CA I Hook Gear Haddock SAP via VMS and specify whether Regular B DAS or Reserve B DAS will be used, prior to leaving port on a trip into the SAP. All non-Sector vessels are required to report their catches (landings and discards) of haddock and cod daily via VMS. Non-Sector vessels that have declared into the CA I Hook Gear Haddock SAP are prohibited from fishing both inside and outside the SAP area on the same trip and are exempt from the current limitation on the number of hooks fished inside the SAP area. Non-Sector vessels are subject to a cod possession and landing limit of 1,000 lb (453.6 kg) per trip. Vessels are not permitted to discard legal-sized cod prior to reaching the catch limit, and are required to end their trip if the cod trip limit is achieved or exceeded. There is no flipping provision for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). For species other than cod, non-Sector vessels are required to comply with the possession and trip limit restrictions currently specified in the regulations. When the Regional Administrator projects that either the cod incidental catch TAC, or the haddock TAC (landings and discards) has been caught for the CA I Hook Gear Haddock SAP, the SAP will close for the remainder of the fishing period.

Sector Vessels

There are two changes to the current provisions for Sector vessels participating in the CA I Hook Gear Haddock SAP. Under this action, Sector vessels that have declared into the CA I Hook Gear Haddock SAP are prohibited from fishing both inside and outside the SAP area on the same trip, and Sector vessels are restricted to a participation period of October 1 - November 15 in the 2005 fishing year. For subsequent fishing years, starting in fishing year 2006, the participation period will alternate each year between Sector and non-Sector participants so that, in fishing year 2006, for example, Sector vessels may fish during a participation period of November 16 - December 31. The current haddock TAC of 1,000 mt for the SAP is divided evenly into two quota periods such that the haddock TAC for each quota period is 500 mt. This action also removes the requirement that Sector vessels shall be required to pay for observer coverage if the Regional Administrator determines that funding for observers is inadequate to provide sufficient coverage. The Regional Administrator may adjust the start of the second quota period if the 500–mt haddock quota for the first quota period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500–mt quota for the second quota period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first quota period. Other provisions for Sector vessels fishing in the SAP remain unchanged.

2. Clarification of Regulations Pertaining to Fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area

Regulations pertaining to access to the Eastern U.S./Canada Haddock SAP Pilot Program and the Eastern U.S./Canada Management Area are clarified through this rule. Regulations at § 648.85(a)(1) and (b)(8) allow fishing in the Eastern U.S./Canada Management Area, and allow fishing in the Eastern U.S./Canada Haddock SAP Area, respectively, and specify rules that pertain to each area. According to these regulations, during the time the SAP is open, eligible vessels may choose to fish in the SAP, and to fish outside the SAP in the open areas of the Eastern U.S./Canada Area. In contrast to these regulations, the regulations at § 648.14(a)(143) and (a)(148) could be broadly interpreted to prohibit fishing in any part of the SAP unless fishing under the SAP rules. These prohibitions were inadvertently written in a broad way that is inconsistent with § 648.85(a)(1) and (b)(8) and the intent of NE Multispecies Framework Adjustment 40–A. These regulations are amended and clarified through this final rule.

Comments and Responses

Four letters were received regarding the proposed rule (July 18, 2005; 70 FR 41189) to implement FW 41, including two letters from industry groups, one letter from the State of Maine, and one letter that was not germane to the proposed action. NMFS has not responded to the comments that were not specific to the proposed management measures. Both industry groups expressed overall support for expanding the CA I Hook Gear Haddock SAP to non-Sector vessels.

Retention of Catch History from the CA I Hook Gear Haddock SAP

Comment 1: One industry group expressed support of the Council's stated intent to not use the catch history from the CA I Hook Gear Haddock SAP for any future allocation decisions. The industry group expressed its desire to have the Council's intent codified in the Code of Federal Regulations. Their belief is that the equal division of the haddock TAC between the two participation periods for the SAP is arbitrary and may unjustly give Sector vessels a 500–mt allocation of haddock that could be used as the basis for future haddock allocations. The State of Maine also expressed concern that the equal

division of haddock between the two participation periods is unfair.

Response 1: The overall haddock TAC is divided equally between the participation periods since the catch rates of haddock were similar over the course of the experimental fishery. By dividing the haddock TAC in half, each group (Sector and non-Sector) has an equal opportunity to catch haddock. In the absence of any historic basis to assign an allocation, the Council viewed this division was viewed as the most equitable. Because the SAP is a new program, and non-Sector vessels have not had the opportunity to fish in the SAP, the alternative of basing the split on recent catch histories could not be used. The Council is a dynamic organization that must base its decisions on the best information available at the time each decision is being made. To restrict the Council's future decision-making ability by codifying the intent of the current Council members would not be in the best interest of the fishery, or the Council in the long term.

Comment 2: One industry group opposed the Council's intent to not use catch history from the CA I Hook Gear Haddock SAP in future allocation decisions and asked NMFS to reject this statement by the Council.

Response 2: The Council's stated intent regarding use of catch history is not binding on NMFS or the Council. Therefore, there is no need to reject (or accept) the Council's current stated intent regarding the use of catch data for a hypothetical, future allocation program, because the Council is not bound by the statement now or in the future.

Division of CA I Hook Gear Haddock SAP into Two Participation Periods

Comment 1: The State of Maine expressed concern that the division of the SAP into two participation periods between Sector and non-Sector vessels promotes fragmentation in an already fragmented fishery and believes that it does not address the potential for a derby fishery in the non-Sector participation period. As an alternative, the State of Maine recommended that Sector and non-Sector vessels should be permitted to fish during whichever participation period they desire, provided that they declare their intent to do so prior to the start of the SAP fishing season. The Regional Administrator would then adjust the TAC of GB cod and GB haddock allocated to each participation period based on the number of vessels that declare their intent to fish in each participation period.

Response 1: The Council considered adopting trip limits for controlling the derby fishery rather than divide the SAP season between Sector and non-Sector participation periods. However, this option was rejected as it did not adequately address derby effects and because it was believed that it could increase safety problems in the fishery. The Council's recommended alternative to split the SAP season into two participation periods was based on a solution offered by the industry. Although the number of non-Sector vessels that will participate in the CA I Hook Gear Haddock SAP is not known, it is not expected to be large. This suggests that the State's concerns about a potential derby amongst non-Sector vessels may be over-stated.

The State of Maine's proposal to alter the SAP raises several questions. If all the vessels sign up for just one of the participation periods, then the State's proposal does nothing to address a potential derby fishery. Additionally, there is no guarantee that non-Sector vessels that want to participate in the second participation period would be able to do so if the cod TAC for the first participation period is over-harvested. Moreover, NMFS can only disapprove or approve measures specified in FW 41 and cannot adjust measures as recommended by this commenter.

Classification

The Regional Administrator has determined that the framework adjustment (FW 41) that this rule implements is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. The Regional Administrator, in making that determination, took into account the data, views, and comments received during the comment period for the proposed rule phase of this final rule.

For the purposes of Executive Order 12866, the action is not considered significant. The annual effect on the economy will not meet the threshold criteria of $100 million and it will not have an adverse material affect on any sector of the economy, productivity, jobs, the environment, public health, or safety, or state, local, or tribal governments or communities.

This final rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 41. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR, as well as those contained in the EA, all of which were prepared for this action. The IRFA was published in the proposed rule (70 FR 41189, July 18, 2005) and is thus not repeated here. Copies of the IRFA, FRFA, RIR, and the EA prepared for FW 41 are available from the Northeast Regional Office (see ADDRESSES). A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to this final rule and in the FW 41 document and are thus not repeated here.

Summary of the Issues Raised by the Public Comments in Response to the IRFA. A summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made from the Proposed Rule as a Result of Such Comments

No comments were received in response to the IRFA. Four general comments were received which are addressed in the preamble of this final rule.

Description and Estimate of the Number of Small Entities to which this Proposed Rule would Apply

This action implements changes with the potential to affect any vessel holding a NE multispecies limited access permit with an allocation of DAS (approximately 1,000 vessels). It is very likely, however, that the measures will impact substantially fewer than the total number of such permit holders, because the SAP requires participants to use only hook gear, there are relatively few vessels that fish with hook gear, and it is not likely that many vessel owners will switch from using another type of fishing gear to hook gear. Based on this, the EA estimates that there will be about 60 vessels in total (Sector and non-Sector) that will participate in this SAP.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $ 3.5 million in gross receipts. Data analyzed for Amendment 13 to the FMP indicated that the maximum annual gross receipts for any single commercial fishing vessel in the NE multispecies fishery for the period 1998 to 2001 was $ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities fall under the SBA size standard for small commercial fishing entities, and there are no disproportionate impacts between small and large entities.

A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The reporting requirements for this final rule are as follows: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position once per hour when fishing in the CA I Hook Gear Haddock SAP; (4) SAP area and DAS use declaration via VMS prior to each trip into the SAP; (5) annual notification of intention to participate in the SAP; (6) notification for observer deployment prior to every trip into the CA I Hook Gear Haddock SAP; and (7) daily electronic catch and discard reports of stocks of concern when fishing in the CA I Hook Gear Haddock SAP.

The VMS purchase and installation, and proof of VMS installation, are one-time cost and reporting requirements. Many vessels have already complied with this requirement, as it is required for other fisheries, including other groundfish special access programs. The automated VMS polling requires no additional effort on the part of the vessel operator. These requirements allow enforcement personnel and managers to monitor access to an area that is otherwise closed to certain fishing activities. Part of the management strategy for this SAP includes the use of quotas for species of concern and the target species. These quotas ensure that mortality targets established under Amendment 13 are not exceeded. In order to monitor the catches of cod and haddock within the SAP, vessels are required to report catches (kept and discarded) on a daily basis through VMS. The 72–hour observer notification allows the Observer Program to place an at-sea observer with the vessel in order to meet the programs sampling needs. At-sea observers perform a valuable role in collecting and validating fisheries data. No professional skills are necessary to report this data beyond those already possessed by vessel owners and operators.

Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adapted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The primary purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. Additional access to this SAP will help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

Management measures to modify the GB cod incidental TACs and provide non-Sector vessel access to the SAP was compared to a No Action alternative. The management measure to minimize derby fishing behavior was compared with both a No Action alternative and an alternative that would have limited vessels to starting only two trips into the SAP per week. The No Action alternative would have resulted in the continuation of the management measures implemented by FW 40–A. Only Sector vessels would have been eligible to fish in the SAP, no incidental GB cod TAC would have been allocated to the SAP, and there would have been no measures to minimize derby fishing behavior. By dividing the season into two periods and thereby reducing the number of vessels eligible to participate during each period, the potential for a derby fishery was greatly reduced allowing the vessels to better plan their fishing activities. An option to allow vessels to start only two trips per week was rejected because it would only partially address the derby effects and, based on industry comment, could have caused safety problems for the fishery.

This action reduces the allocation of GB cod to the Regular B DAS Pilot Program in order to establish a GB cod incidental catch TAC for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP. This reallocation of incidental TAC could result in increased economic benefits if activities in the SAP results in a higher yield at lower cost than the Regular B DAS Pilot Program. However, unless the same vessels are the beneficiaries of the reallocation, participation by non-Sector vessels in this SAP could result in a transfer of benefits from one group of vessels to another (e.g., Regular B DAS Pilot Program vessels to CA I Hook Gear Haddock SAP vessels). The magnitude of the impacts will depend upon the amount of GB cod incidental TAC that is harvested under the Regular B DAS Pilot Program and the timing of the implementation of the SAP measures. There are minimal data to determine the specific impacts of the reallocation on the Regular B DAS Pilot Program or the fishery as a whole. During the first quarter of the 2005 fishing year, the Regular B DAS Pilot Program caught a substantial portion of the GB cod incidental catch TAC. This suggests that such a reallocation may limit the Regular B DAS Pilot Program; however, the level of incidental catch of GB cod during the CA I Hook Gear Haddock SAP season (October - December) may be different from that realized earlier in the fishing year.

This action implements measures that allow non-Sector vessels to use hook gear to target haddock in the SAP. In the short term, this opportunity may be important to the profitability of participating vessels and provides mitigation of the short-term adverse effects of the DAS reductions implemented by Amendment 13. The beneficiaries of the action are limited to individuals that already use bottom longline gear and individuals that could profitably convert to the use of bottom longline gear. Based upon an estimate of the number of vessels that would join the Sector in 2005, and empirical information, the EA estimates that 40 Sector vessels and 20 non-Sector vessels will participate in the SAP.

Estimated total revenue for Sector and non-Sector participants is $ 1.3 million and $ 0.6 million, respectively. Estimated surplus per vessel for Sector and non-Sector participants is $19,300 and $ 16,600, respectively. These returns are based upon the assumptions of 5,000 lb (2,268 kg) of haddock kept per trip, an incidental cod catch TAC of 14 mt, a total of 441 total trips into the SAP, and the implementation of measures to mitigate derby fishing behavior.

The benefits that would accrue to Sector and non-Sector vessels depend in part on whether measures to prevent a derby are implemented. Dividing the SAP into two time periods and limiting fishing in each period to either Sector or non-Sector vessels reduces benefits to Sector vessels, but provides benefits to non-Sector vessels at the same level. Without measures to minimize the potential of derby fishing, the estimated surplus per participating Sector vessel would be $29,300, because the Sector vessels would not be limited to a maximum haddock catch of 500 mt. Sector participants would be foregoing

potential economic gains in order to minimize derby fishing behavior and competition for the haddock TAC. The economic analysis also noted that there are potential costs of derby fishing, such as price depression, loss of gear through gear conflicts, and the costs of unsafe fishing practices.

In contrast, the non-Sector vessels may be limited by the GB cod incidental catch TAC, with or without measures to address derby fishing. In other words, the constraining factor on the catch of non-Sector vessels may be the GB cod incidental catch TAC, and not the haddock TAC. If non-Sector participants are able to reduce incidental catches of cod and take all of the haddock available to them, the estimated net return per vessel would double.

Dividing the season into two periods has other implications due to the seasonal variations in the availability and price of haddock. Based upon experimental data, catch rates of haddock may be highest in the beginning of the SAP season and subsequently decline, while average haddock prices may increase over the SAP season. The increase in average price may mitigate the effect of a reduced catch rate in the latter part of the SAP season.

It is likely that most or all participating vessels will experience positive economic results. The potential economic benefits of the measures would represent only a small increase in the total value of the NE region groundfish sales, however it is unknown where the economic benefits that result from the participation of non-Sector vessels will accrue.

Public Reporting Burden

This rule contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) that have been approved by OMB under OMB control numbers 0648–0501 and 0648–0502. The current expiration date for the reporting requirements under this collection is June 30, 2008. Public comment on this collection of information was solicited in the proposed rule to Framework Adjustment 40–A (69 FR 55388, September 14, 2004) and in the renewal of the collection of information for OMB control number 0648–0501 (69 FR 61344, October 18, 2004) and OMB control number 0648–0502 (69 FR 61346, October 18, 2004). The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The approved reporting requirements for this rule and the estimated average time for a response are as follows:

1. VMS purchase and installation, OMB control number 0648–0501 (1 hr/response);

2. VMS proof of installation, OMB control number 0648–0501 (5 min/response);

3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB control number 0648–0501 (5 sec/response);

4. Automated VMS polling of vessel position once per hour when fishing in the CA I Hook Gear Haddock SAP, OMB control number 0648–0501 (5 sec/response);

5. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB control number 0648–0501 (5 min/response);

6. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hook Gear Haddock SAP, OMB control number 0648–0501 (5 min/response);

7. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hook Gear Haddock SAP, OMB control number 0648–0202 (2 min/response);

8. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB control number 0648–0501 (2 min/response);

9. Daily electronic catch and discard reports of stocks of concern when fishing in the CA I Hook Gear Haddock SAP, OMB control number 0648–0502 (0.25 hr/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2005.

James W. Balsiger,

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.10, paragraphs (b)(3)(i)(C) and (D) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(b)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7).

* * * * *

■ 3. In § 648.14, paragraphs (a)(143), (a)(148), (c)(67), (c)(68), (c)(70), and (c)(73) through (c)(77) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(143) If fishing under a NE multispecies DAS, fish in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

* * * * *

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

* * * * *

(c) * * *

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

* * * * *

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.

* * * * *

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the

VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B), whichever is applicable.

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C), whichever is applicable.

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(v)(D) or (b)(7)(vi)(D), whichever is applicable.

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

* * * * *

■ 4. In § 648.85, paragraph (a) introductory text and paragraphs (b)(5)(ii), (b)(7)(i), (b)(7)(iii), (b)(7)(iv), (b)(7)(v), (b)(8)(v)(A)(2), (b)(8)(v)(A)(3), (b)(8)(v)(B), (b)(8)(v)(C), (b)(8)(v)(E), (b)(8)(v)(H), and (b)(8)(v)(L) are revised, and paragraph (b)(7)(vi) is added to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

* * * * *

(b) * * *

(5) * * *

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

* * * * *

(7) * * *

(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraph (b)(7)(iv)(I) or (b)(7)(vi)(F) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

* * * * *

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(G) of this section is harvested prior to November 15.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(7)(iii), (v), and (vi) of this section.

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section.

(B) *VMS requirement.* An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* Starting in the 2006 fishing year, to be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate in that year. For the 2005 fishing year, for non-Sector vessels to be eligible to participate, non-Sector vessels must notify the NMFS Observer Program by October 24. This notification need not include specific information about the date of the trip. For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(7)(ii) of this section.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified under paragraph (b)(7)(v)(B) of this section.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is 1,000 mt. The maximum amount of haddock that may be caught is divided between the two participation periods as follows: 500 mt for the October 1 - November 15 participation period, and 500 mt for the November 16 - December 31 participation period, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator may adjust the 500–mt quota for the second participation period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP.

(H) *Landing limits.* For all eligible vessels declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(7)(ii) of this section, to all eligible vessels.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(v) apply only to Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(d).

(B) *Gear restrictions.* A vessel enrolled in the Sector is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(C) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d).

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(E) *GB cod incidental catch TAC.* There is no GB cod incidental catch TAC specified for Sector vessels declared into the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(vi) *Non-Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(vi) apply only to non-Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(B) *Gear restrictions.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v).

(C) *Landing limits.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A non-Sector vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the CA I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. The reports must include at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(E) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(E) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) * * *

(v) * * *

(A) * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8)(i) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section.

* * * * *

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(i) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

* * * * *

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. No other type of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, with the exception of a flounder net as described in paragraph (a)(3)(iii) of this section, provided the

flounder net is stowed in accordance with § 648.23(b).

* * * * *

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(ii) of this section.

* * * * *

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

[FR Doc. 05–18229 Filed 9–9–05; 12:44 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 70, No. 177

Wednesday, September 14, 2005

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 54

[Docket No. PRM–54–03]

Joseph Scarpelli, Mayor of Brick Township, NJ; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 20, 2005, which was filed with the Commission by Michele R. Donato, Esquire, on behalf of Mayor Joseph Scarpelli of Brick Township. The petition was docketed by the NRC on July 25, 2005, and has been assigned Docket No. PRM–54–03. The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction.

DATES: Submit comments by November 28, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include PRM–54–03 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

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

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

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

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner is the Mayor of Brick Township, New Jersey. Brick Township is situated in the northern part of Ocean County, directly on the border of Monmouth County, New Jersey. Brick Township is located approximately 18 miles north of the Oyster Creek Nuclear Generating Station. The petitioner states that Brick Township experienced great growth over the past four decades. Today, Brick Township is home to over 77,000 residents. In 1970, Brick Township had 35,057 residents.

The petitioner states that Ocean County is located on the Jersey Shore, approximately 50 miles south of New York City and 50 miles east of Philadelphia, Pennsylvania. Ocean County encompasses nearly 640 square miles. The petitioner states that its location on the Atlantic Ocean makes Ocean County one of the premier tourist destinations in the United States.

The petitioner states that Oyster Creek Nuclear Generating Station, which is located in Lacey Township, became operational in 1969. In 1970, one year after Oyster Creek began producing electricity, Ocean County, New Jersey had 208,470 residents. The petitioner also states that according to the 2000 Census, Ocean County today has 510,916 residents, a growth of over 245 percent.

Background

The petitioner submitted two letters dated July 7, 2005, and July 13, 2005, respectively. These letters are being treated as one petition. The petitioner also included letters from the New Jersey Chapter of the Sierra Club and the New Jersey Environmental Federation in support of the petition.

The petitioner states that there have been numerous incidents that have occurred since Oyster Creek began operating that have raised concerns among many people about using nuclear power to generate energy, particularly in densely populated areas. The petitioner states that the near catastrophe at Three Mile Island, the realized catastrophe at Chernobyl, the controversy about Yucca Mountain and the terrorist attacks of September 11, 2001, have raised concerns about the safety and security of nuclear power plants.

The petitioner believes that the evacuation of the communities

surrounding Oyster Creek is of particular concern and requires extensive review and consideration. The petitioner states that traffic congestion is a growing concern in Ocean County as the infrastructure has not kept up with the population growth. Any large scale evacuation would likely be fraught with difficulties that would endanger lives.

The Proposed Amendment

The petitioner requests that the NRC amend its regulations to provide that a renewed license will be issued only if the plant operator demonstrates that the plant meets all criteria and requirements that would be applicable if the plant was being proposed *de novo* for initial construction. The petitioner also requests that § 54.29 be amended to provide that a renewed license may be issued by the Commission if the Commission finds that, upon a *de novo* review, the plant would be entitled to an initial operating license in accordance with all criteria applicable to initial operating licenses, as set out in the Commission's regulations, including 10 CFR parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 54, 55, 71, 100, and the appendices to these regulations. The petitioner requests that corresponding amendments be made to §§ 54.4, 54.19, 54.21, and 54.23, and that § 54.30 be rescinded. The petitioner states that the criteria to be examined as part of a renewal application should include such factors as demographics, siting, emergency evacuation, site security, etc. The petitioner believes that this analysis should be performed in a manner that focuses the NRC's attention on the critical plant-specific factors and conditions that have the greatest potential to affect public safety.

Problems With the Current Process

The petitioner believes that the process and criteria currently established in part 54 is seriously flawed. The petitioner states that the process for license renewal appears to be based on the theory that if the plant was originally licensed at the site, it is satisfactory to renew the license, barring any significant issues having to do with passive systems, structures, and components (SSCs). The petitioner states that the regulations for license renewal should be broadened and sufficiently comprehensive to cover all of the facets (including consideration of a worst-case scenario) that were considered for initial construction. Alternatively, the petitioner states that the license renewal process should examine all issues related to the plant and its original license, and then concentrate on any issues that are new to that plant or have changed since the original license was issued or that deviate from the original licensing basis.

Key Renewal Issues

The petitioner states that as Oyster Creek approaches the end of its 40 year operating license, it is necessary to answer important questions about the plant. The petitioner states that these questions are specific to the Oyster Creek plant and those who live near the plant deserve to have these questions reviewed. These questions include the following:

- Could a new plant, designed and built to current standards, be licensed on the same site today? With the growth of Ocean County, which continues today, it is not certain that a nuclear plant would be permitted there today.
- The design of Oyster Creek's reactor has been prohibited for nearly four decades. Does that reactor conform to today's standards? Would Oyster Creek receive a license today with that reactor?
- In light of the terrorist attacks of September 11, 2001, would Oyster Creek's storage system, which is located close to Route 9, be acceptable today?
- Is the evacuation plan realistic in today's Ocean County? Would the tremendous growth of Ocean County over the past four decades, and the failure of Ocean County's infrastructure to keep pace with this growth, inhibit Oyster Creek's likelihood of receiving an operating license?
- Would a license be permitted in light of the public opposition to the plant? To date, 21 municipalities in Ocean County, as well as Congressmen Smith, Saxton and Pallone, New Jersey Department of Environmental Protection Commissioner Bradley, and the Ocean County Board of Chosen Freeholders, have expressed either their concern for a thorough review and/or their opposition to the re-licensing.
- In recent weeks, two studies released by the National Academy of Sciences have raised serious concerns about nuclear plant security and the health effects of low-level radiation upon people who reside near nuclear plants. Should these two scientific studies and other relevant scientific data regarding human health and anti-terrorism be taken into account when considering Oyster Creek's license renewal application?

Conclusion

The petitioner states that many key factors that affect nuclear plant licensing evolve over time: Population grows, local/state Federal regulations evolve, public awareness increases, technology improves, and plant economic values change. The petitioner believes that all of these factors should be examined and weighed in the formal 10 CFR part 54 relicensing process. Accordingly, the petitioner requests that the NRC amend its regulations related to license renewal as described previously in the section titled, ''The Proposed Amendment.''

Dated at Rockville, Maryland, this 8th day of September, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–18192 Filed 9–13–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22156; Directorate Identifier 2005–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhardt Grob Luft-Und Raumfahrt GmbH & CO KG Model G103 TWIN ASTIR Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Burkhardt Grob Luft-Und Raumfahrt GmbH & CO KG (Grob) Model G103 TWIN ASTIR sailplanes. This proposed AD would require you to replace the elevator lever, part number (P/N) 103–3521, with a part of improved design, P/N 103–3523. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent cracks in the elevator lever, which could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by October 14, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

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

• *Fax:* 1–202–493–2251.

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

To get the service information identified in this proposed AD, contact Burkhardt Grob Luft-Und Raumfahrt GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–22156; Directorate Identifier 2005–CE–43–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–22156; Directorate Identifier 2005-CE–43–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–22156; Directorate Identifier 2005–CE–43–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Grob Model G103 TWIN ASTIR sailplanes. The LBA reports an instance of elevator level failure on one of the affected sailplanes. Cracks in the elevator lever caused the elevator lever to fail.

The cracks are a result of inadequate design in the structural strength and durability.

The elevator lever, part number (P/N) 103–3521, is made from the same cast alloy as the airbrake over-center levers, P/Ns 103–4123 (left) and 103–4124 (right), used on Grob Model G103 TWIN ASTIR sailplanes. Cracks found on these parts caused us to issue AD 97–24–10, which requires replacing P/Ns 103–4123 and 103–4124 with parts of improved design, P/N 103B–4123 and 103B–4124.

What is the potential impact if FAA took no action? If not prevented, cracks in the elevator lever could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

Is there service information that applies to this subject? Grob has issued Service Bulletin No. MSB 315–67/1, dated December 20, 2004.

What are the provisions of this service information? The service bulletin specifies replacing elevator lever, P/N 103–3521 made of aluminum cast alloy, with P/N 103–3523 made from sheet aluminum.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–292R1, dated February 28, 2005, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These Grob Model G103 TWIN ASTIR sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Grob Model G103 TWIN ASTIR sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent cracks in the elevator lever, which could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

What would this proposed AD require? This proposed AD would require you to replace P/N 103–3521, aluminum cast alloy elevator lever, with P/N 103–3523, sheet aluminum elevator lever.

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

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 60 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the

affected sailplanes? We estimate the following costs to do this proposed replacement:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
20 × $65 per hour = $1,300	$715	$2,015	$120,900

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–22156; Directorate Identifier 2005–CE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Burkhardt Grob Luft-Und Raumfahrt GmbH & CO KG: Docket No. FAA–2005–22156; Directorate Identifier 2005–CE–43–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by October 14, 2005.

What Other ADs Are Affected By This Action?

(b) None.

What Sailplanes Are Affected By This AD?

(c) This AD affects Model G103 TWIN ASTIR sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent cracks in the elevator lever, which could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Check the sailplane service history records to determine if part number (P/N) 103–3521, aluminum cast alloy elevator lever, has been replaced with P/N 103–3523, sheet aluminum elevator lever.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the sailplane service history records as specified in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) If you can positively determine by checking the sailplane service history records that the replacement specified in paragraph (e)(1) of this AD has been done, no further action is required.	Not applicable	Not applicable.

Actions	Compliance	Procedures
(3) If you cannot positively determined by checking the sailplane service history records that the replacement specified in paragraph (e)(1) of this AD has been done, replace P/N 103–3521 with P/N 103–3523.	Within the next 25 hours TIS after the effective date of this AD.	Following GROB Luft-und Raumfahrt Service Bulletin MSB 315–67/1 dated December 20, 2004.
(4) Do not install any P/N 103–3521, aluminum cast alloy elevator lever.	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–292R1, dated February 28, 2005, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Burkhardt Grob Luft-Und Raumfahrt GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–22156; Directorate Identifier 2005–CE–43–AD.

Issued in Kansas City, Missouri, on September 8, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18205 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22401; Directorate Identifier 2004–NM–93–AD]

RIN 2120–AA64

Airworthiness Directives; Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA 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 all Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA airplanes. This proposed AD would require revising the Limitations Section of the Airplane Flight Manual to prohibit operation of the airplane past its designed life limit for the primary structure, which is 15,000 flight hours or 15,000 fight cycles, whichever occurs first; and to require contacting the FAA for approval of analysis that the airplane is safe to continue operation beyond the designed life limit. This proposed AD is prompted by a report that all airplanes in operation might have met or exceeded the designed life limit for the primary structure. We are proposing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus Deutschland G.m.b.H, Customer Service HFB 320, Postfach 95 01 09, D–21111 Hamburg, Germany.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22401; the directorate identifier for this docket is 2004–NM–93–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22401; Directorate Identifier 2004–NM–93–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 submitted 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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can 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 DMS receives them.

Discussion

The Luftfahrt-Bundesamt (LBA) , which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on all Hamburger Flugzeugbau G.m.b.H. Model HFB 320 HANSA airplanes. The LBA advises that it is now possible that these airplanes might have exceeded, be close to, or have reached the design goal of the primary structure, which is 15,000 flight cycles, or 15,000 flight hours, whichever occurs first. The LBA states that Chapter 5 of the airplane maintenance manual (AMM) should be revised to prohibit operators from flying the airplane after it reaches its design goal, unless the operator complies with further inspections and/or modifications. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Relevant Service Information

Hamburger Flugzeugbau has issued HFB 320 Hansa Service Bulletin 05–01, Revision 1, dated December 11, 2002. The service bulletin describes procedures for inserting Temporary Revision (TR) 5–55, dated December 11, 2002, into Chapter 5 of the AMM. TR 5–55 restricts use of the AMM to the design goal limit (life limit) of the airplane. TR 5–55 is included in the service bulletin. For airplanes that reach, or have exceeded, the life limit of 15,000 flight cycles, or 15,000 flight hours, the service bulletin states that operators should contact the manufacturer to determine a program of inspections and repairs for the airplane to extend its operation. The service bulletin also recommends that operators of airplanes that have reached or exceeded the life limit send a report to the manufacturer indicating that they have inserted TR 5–55 into Chapter 5 of the AMM; and giving information about the airplane and its owner. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LBA mandated the service information and issued German airworthiness directive 2002–158, dated October 3, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require revising the airplane flight manual to prohibit operation of the airplane past its designed life limit for the primary structure, which is 15,000 flight hours or 15,000 fight cycles, whichever occurs first. This proposed AD would also require contacting the FAA for approval to continue operation beyond the designed life limit.

Differences Between the Proposed AD and the German Airworthiness Directive

The German airworthiness directive also specifies that operators should ground airplanes that have reached the designed life limit, and contact the manufacturer to determine actions to take for continued airworthiness. This proposed AD would require that operators contact the FAA to determine these actions.

Operators should note that, although the German airworthiness directive specifies that operators should send an accomplishment report to the manufacturer, this proposed AD would not require that action.

Costs of Compliance

There are 4 airplanes of U.S. registry that would be affected by this proposed AD. The revision to the Airworthiness Limitations Section of the Instructions for Continued Airworthiness that is proposed in this AD would take about 1 work hour per airplane at an average labor rate of $65 per work hour. Based on these figures, the cost of the proposed AFM revision for U.S. operators would be $260, or $65 per airplane. We recognize that this proposed AD may impose certain additional operational costs. However, we cannot calculate those costs because we cannot predict the extent of any necessary repairs to ensure the continued airworthiness of the affected airplanes.

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

Hamburger Flugzeugbau G.m.b.H.: Docket No. FAA–2005–22401; Directorate Identifier 2004–NM–93–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Hamburger Flugzeugbau Model HFB 320 HANSA airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that all airplanes in operation might have met or exceeded the designed life limit for the primary structure. We are issuing this AD to prevent continued operation of an airplane beyond its designed life limit for the primary structure, which could result in reduced structural integrity 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.

Airworthiness Limitations Revision

(f) Within 30 days after the effective date of this AD: Revise the Limitations section of the Airplane Flight Manual (AFM) to state the following (or insert a copy of this AD into the limitations section):

Do not operate the airplane beyond 15,000 total flight cycles, or 15,000 total flight hours, whichever occurs first.

(g) This limitation may be removed from the AFM after the Manager, International Branch, ANM–116, FAA, approves analysis that would substantiate continued safe operation beyond the designed life limit of 15,000 total flight cycles, or within 15,000 total flight hours on the airplane, whichever occurs first.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) German airworthiness directive 2002–158, dated October 3, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18210 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20403; Directorate Identifier 2005–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 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 Bombardier Model DHC–8–400 series airplanes. This proposed AD would require an inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer; a torque check of the attachment bolts in the attachment fittings of the front, middle, and rear spars; and corrective actions if necessary. This proposed AD results from a report indicating that delaminated shims extruded from the interface between the forward attaching fittings of horizontal stabilizer and the top rib of the vertical stabilizer, and that inadequate torque values of some bolts were found. We are proposing this AD to prevent reduced structural integrity of the horizontal stabilizer, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 14, 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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 256–7525; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–20403; Directorate Identifier 2005–NM–144–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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400 series airplanes. TCCA advises that delaminated shims extruded from the interface between the forward attaching fittings of horizontal stabilizer and the top rib of the vertical stabilizer. In addition, during removal of the horizontal stabilizer for replacing the laminated shims with solid shims, inadequate torque values of some bolts at the six attachment locations (two each at the front, middle, and rear spars) were found on some airplanes. This can cause increased load on the bolts and consequent reduction in fatigue life of the bolts. These conditions, if not corrected, could result in reduced structural integrity of the horizontal stabilizer, and consequent loss of controllability of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 84–55–02, Revision ''A,'' dated January 12, 2005. The service bulletin describes doing the following procedures:

- A detailed inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizers;
- A breakaway torque check of the six attachment bolts in the attachment fittings of the front, middle, and rear spars; and
- Corrective actions if necessary. The corrective actions include replacing the laminated shims, between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer, with solid shims and replacing the corresponding barrel nut and retainer with new parts.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–07, issued March 21, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

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

Difference Between the Proposed AD and Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a sheet recording torque values to the airplane manufacturer, this proposed AD would not require that action. We do not need this information from operators.

Costs of Compliance

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	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection and torque check.	2	$65	None	$130	19	$2,470
Replacement	30	65	Free of charge	1,950	19	37,050

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):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2005–20403; Directorate Identifier 2005–NM–144–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 14, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4081 inclusive.

Unsafe Condition

(d) This AD results from a report indicating that laminated shims were delaminated and extruded from the interface between the forward attaching fittings of horizontal stabilizer and the top rib of the vertical stabilizer, and that inadequate torque values of some bolts were found. We are issuing this AD to prevent reduced structural integrity of the horizontal stabilizer, and consequent loss of controllability of the airplane.

Compliance

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

Service Information

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Service Bulletin 84–55–02, Revision 'A,' dated January 12, 2005.

(g) Accomplishing a detailed inspection, a breakaway torque check, and corrective actions if necessary before the effective date of this AD in accordance with Bombardier Service Bulletin 84–55–02, dated December 11, 2003, is acceptable for compliance with the corresponding requirements of this AD.

(h) Accomplishing the repair before the effective date of this AD in accordance with the Bombardier repair drawings in Table 1 of this AD is acceptable for compliance with the requirements of this AD.

TABLE 1.—REPAIR DRAWINGS

Bombardier repair drawing	RD issue	Dated
RD 8/4–55–083	3	April 16, 2003.
RD 8/4–55–084	1	May 5, 2003.
RD 8/4–55–089	2	June 6, 2003.
RD 8/4–55–090	3	August 26, 2003.
RD 8/4–55–093	2	June 20, 2003.
RD 8/4–55–094	3	September 4, 2003.
RD 8/4–55–106	2	July 31, 2003.
RD 8/4–55–110	3	October 1, 2003.
RD 8/4–55–138	1	October 29, 2003.

Detailed Inspection and Torque Check

(i) Within 4,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD in accordance with Part A of the service bulletin.

(1) Do a detailed inspection of the laminated shims for cracks, damage, or extrusion between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(2) Do a breakaway torque check of the six attachment bolts in the attachment fittings of the front, middle, and rear spars.

Corrective Actions

(j) If, during the inspection required by paragraph (i)(1) of this AD, any cracked, damaged, or extruded laminated shim is found, before further flight, replace the discrepant laminated shim with a solid shim, and replace the attachment bolts, barrel nuts, and retainers of both front spars with new parts, in accordance with Parts A and B of the service bulletin.

(k) If, during the torque check required by paragraph (i)(2) of this AD, any attachment bolt is found with a breakaway torque value outside the limits specified in the service bulletin, before further flight, replace the attachment bolt and its corresponding barrel nut and retainer with new parts, in accordance with Part A of the service bulletin.

Replacement of Laminated Shims

(l) Within 8,000 flight hours after the effective date of this AD, unless previously accomplished in accordance with paragraph (j) of this AD, replace the laminated shims, between the forward attachment fittings of the horizontal stabilizer and the top rib of the vertical stabilizer, with solid shims and replace the corresponding barrel nut and retainer with new parts, in accordance with Part B of the service bulletin.

No Reporting

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

Alternative Methods of Compliance (AMOCs)

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

Related Information

(o) Canadian airworthiness directive CF–2005–07, issued March 21, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18208 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20402; Directorate Identifier 2005–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; Sabreliner Model NA–265, NA–265–20, NA–265–30, NA–265–40, NA–265–50, NA–265–60, NA–265–65, NA–265–70, and NA–265–80 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Sabreliner Model NA–265–40, NA–265–50, NA–265–60, NA–265–70, and NA–265–80 series airplanes. The existing AD currently requires repetitive inspections for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib, and corrective actions if necessary. This proposed AD would expand the applicability of the existing AD and require new repetitive inspections for fuel leaks of the front

and rear spars of the wing, and for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib. This proposed AD would also require related investigative and corrective actions, if necessary. This proposed AD results from reports of cracking in the upper and lower flanges of the front and rear spars of the wing near the wing center section, and in the lugs on the rear spar. We are proposing this AD to detect and correct cracking or other discrepancies in these areas, which could result in structural failure of the wing.

DATES: We must receive comments on this proposed AD by October 31, 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 Sabreliner Corporation, 18118 Chesterfield Airport Road, Chesterfield, Missouri 63005–1121, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: T.N. Baktha, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4155; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–20402; Directorate Identifier 2005–NM–133–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 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 73–18–03, amendment 39–3201 (43 FR 19208, May 4, 1978), for certain Rockwell International Model NA–265–40, NA–265–50, NA–265–60, NA–265–70, and NA–265–80 series airplanes. That AD requires repetitive inspections for discrepancies in the front and rear spars of the wing in the area of the wing center section, and in the lugs on the rear spar and wing trailing edge panel rib, and corrective actions if necessary. That AD resulted from reports of cracking in the upper and lower flanges of the front and rear spars of the wing near the wing center section, and in the lugs on the rear spar. We issued that AD to detect possible cracks, corrosion, or breaks in the surface finish in the wing spars and related areas.

Actions Since Existing AD Was Issued

Since we issued AD 73–18–03, we have determined that Sabreliner Model NA–265, NA–265–20, NA–265–30, and NA–265–65 series airplanes may also be subject to the unsafe condition addressed by AD 73–18–03. These models were not listed in the applicability statement of AD 73–18–03.

Relevant Service Information

We have reviewed Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005. Sabreliner NA–265 Service Bulletin 83–2 supersedes Sabreliner Service Bulletin 73–11, revised June 1, 1978. (AD 73–18–03 refers to the original issue of Sabreliner Service Bulletin 73–11, dated June 18, 1973 (or later FAA-approved revisions), as the appropriate source of service information for the actions required by that AD.)

The procedures in Sabreliner NA–265 Service Bulletin 83–2 are substantially similar to those in Sabreliner Service Bulletin 73–11 and specify the following actions:

- Performing repetitive inspections of the front and rear spars of the wing for fuel leaks.
- Performing repetitive inspections using a borescope to detect breaks in the surface finish, cracking, or corrosion in the upper and lower flanges of the front spar of the wing, in the area of the wing center section.
- Performing repetitive inspections using a borescope to detect breaks in the surface finish, cracking, or corrosion in the upper and lower flanges and the splice plates of the rear spar of the wing, in the area of the wing center section.
- Performing related investigative action, consisting of a penetrant inspection for cracking, if a break in the surface finish or corrosion is found during any inspection of the rear spar in the area of the wing center section.
- Performing repetitive inspections to detect cracking in the lugs of the outboard rear spar and in the fittings on the wing trailing edge panel rib.
- Contacting Sabreliner for an engineering analysis if any crack, corrosion, or break in the surface finish is found.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 73–18–03 and would retain the requirements of the existing AD. This proposed AD would also expand the applicability to include additional airplanes, and would require accomplishing the actions specified in Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005, specifies that operators may contact the manufacturer for disposition of certain repair conditions. This proposed AD would require operators to repair those conditions in accordance with a method approved by the FAA.

Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005, specifies an inspection for fuel leaks, and another inspection for cracking of the lugs on the rear spar and wing trailing edge panel rib. We have determined that these inspections can be done using a general visual inspection method. Note 1 of this proposed AD defines a general visual inspection.

Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005, describes procedures for submitting a sheet recording compliance with the service bulletin. This proposed AD does not require that action.

These differences have been coordinated with the manufacturer.

Changes to Existing AD

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

Also, we removed all references to ''later FAA-approved revision'' from the requirements of the existing AD, to be consistent with the policy of the Office of the Federal Register. This change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since we may decide to approve later revisions of the service bulletin as an alternative method of compliance with this AD, as provided by paragraph (n) of this AD.

Also, we have revised references to inspecting and doing repairs in accordance with a method ''approved by the Chief, Aircraft Engineering Division, FAA Western Region.'' This office no longer exists. Accordingly, we have revised paragraphs (f), (g), and (h) of this AD to refer to inspecting and doing repairs, as applicable, in accordance with a method approved by the Manager, Wichita Aircraft Certification Office, FAA. We have also included paragraph (i) in this proposed AD to give credit for inspecting or doing repairs before the effective date of this AD in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Costs of Compliance

There are about 77 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 43 airplanes of U.S. registry.

The inspection specified in this proposed AD would take about 12 work hours per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $33,540, or $780 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 removing amendment 39–3201 (43 FR 19208, May 4, 1978) and adding the following new airworthiness directive (AD):

Sabreliner Corporation: Docket No. FAA–2005–20402; Directorate Identifier 2005–NM–133–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 31, 2005.

Affected ADs

(b) This AD supersedes AD 73–18–03.

Applicability

(c) This AD applies to Sabreliner Model NA–265, NA–265–20, NA–265–30, NA–265–40, NA–265–50, NA–265–60, NA–265–65, NA–265–70, and NA–265–80 series airplanes; certificated in any category; as identified in Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005.

Unsafe Condition

(d) This AD results from reports of cracking in the upper and lower flanges of the front and rear spars of the wing near the wing center section, and in the lugs on the rear spar. The FAA is issuing this AD to detect and correct cracking or other discrepancies in these areas, which could result in structural failure of the wing.

Compliance

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

Requirements of AD 73–18–03

Repetitive Inspections

(f) For the airplanes listed in Table 1 of this AD: On or before June 18, 1974, unless previously accomplished within 1 year, and at intervals not to exceed 2 years thereafter until the first inspection in accordance with paragraph (j) of this AD has been done, inspect the upper and lower flanges of the front and rear spars in the area of the wing center section, and the lugs on the rear spar and wing trailing edge panel rib, per the instructions of Sabreliner Service Bulletin

73–11, revised June 1, 1978; or an equivalent inspection approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Inspections done before the effective date of this AD in accordance with Sabreliner Service Bulletin 73–11, dated June 15, 1973, are acceptable for compliance with this paragraph.

TABLE 1.—AIRPLANES SUBJECT TO PARAGRAPH (F), (G), AND (H) OF THIS AD

Model	Affected serial numbers
NA–265–40	282–1 and subsequent.
NA–265–50	287–1.
NA–265–60	306–1 through 306–139 inclusive.
NA–265–70	370–1 through 370–9 inclusive.
NA–265–80	380–1 through 380–61 inclusive.

Corrective Actions

(g) For the airplanes listed in Table 1 of this AD: Prior to further flight, if cracks, corrosion, or breaks in the surface finish are found, during any inspection in accordance with paragraph (f) of this AD, in the front or rear spars in the area of the wing center section, replace with like serviceable parts, or repair in a manner approved by the Manager, Wichita ACO.

(h) For the airplanes listed in Table 1 of this AD: Prior to further flight, if cracks are found, during any inspection in accordance with paragraph (f) of this AD, in the lugs on the rear spar and wing trailing edge rib, replace the cracked parts with like serviceable parts, or repair in a manner approved by the Manager, Wichita ACO.

New Requirements of This AD

Inspections/Repairs Accomplished Previously

(i) Inspections and repairs accomplished before the effective date of this AD in accordance with a method approved by the Chief, Aircraft Engineering Division, FAA Western Region, are acceptable for compliance with paragraphs (f), (g), and (h) of this AD, as applicable.

New Repetitive Inspections

(j) Within 90 days after the effective date of this AD, except as provided by paragraph (j)(1) of this AD: Perform a general visual inspection for fuel leaks; an inspection using a borescope to detect any break in the surface finish, corrosion, or cracking of the upper and lower flanges on the front and rear spars of the wing in the area of the wing center section; a general visual inspection to detect cracking of the lugs on the rear spar and wing trailing edge panel rib; and related investigative actions, as applicable; by doing all applicable actions in accordance with the instructions of Sabreliner NA–265 Service Bulletin 83–2, revised January 31, 2005. Repeat the inspection thereafter at intervals not to exceed 24 months.

(1) If the inspection required by paragraph (j) of this AD has been accomplished within 12 months before the effective date of this AD, the inspection required by paragraph (j) of this AD is not required until 24 months after the most recent inspection in accordance with the requirements of paragraph (j) of this AD.

(2) For airplanes subject to paragraph (f) of this AD: Accomplishing of the initial inspection required by paragraph (j) of this AD terminates the requirements of paragraph (f) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Corrective Actions

(k) If any fuel leak, break in the surface finish, corrosion, or cracking is found during any inspection required by paragraph (j) of this AD: Before further flight, replace the subject part with a new or serviceable part, or repair the subject part in accordance with a method approved by the Manager, Wichita ACO. Where Sabreliner NA–265 Service Bulletin 83–2 specifies contacting Sabreliner for an engineering analysis: Before further flight, repair in accordance with a method approved by the Manager, Wichita ACO. For a repair method to be approved by the Manager, Wichita ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Actions Accomplished Previously

(l) Inspections and corrective actions accomplished before the effective date of this AD in accordance with the original issue of Sabreliner NA–265 Service Bulletin 83–2, dated March 4, 1983; or Sabreliner NA–265 Service Bulletin 83–2, revised February 29, 1996; are acceptable for compliance with the corresponding actions required by paragraphs (j) and (k) of this AD.

No Reporting Requirement

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

Alternative Methods of Compliance (AMOCs)

(n) The Manager, Wichita ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18209 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22411; Directorate Identifier 2005–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 Series Airplanes; Model A300 B4 Series Airplanes; Model A300 B4–600 Series Airplanes; Model A300 B4–600R Series Airplanes; Model F4 600R Series Airplanes; Model A300 C4–605R Variant F Airplanes; and Model A310–200 Series Airplanes; and Model A310–300 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 replacing the existing cabin altitude indicator in the cabin pressure control panel with a new, improved cabin altitude indicator. This proposed AD is prompted by a report of injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. We are proposing this AD to prevent injury to crewmembers, and subsequent damage to the airplane caused by rapid opening of the door.

DATES: We must receive comments on this proposed AD by October 14, 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22411; the directorate identifier for this docket is 2005–NM–074–AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22411; Directorate Identifier 2005–NM–074–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 submitted 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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can 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 (DMS) receives them.

Discussion

The DGAC, which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 series airplanes and A300 B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4 605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes. The DGAC advises that the existing cabin altitude pressure indicator can give a false indication of the cabin altitude especially when the pressurization system is operated in manual mode. Accidents have occurred on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure (a positive pressure difference between inside the cabin and outside the cabin) causing the doors to rapidly open. In these accidents, the existing pressurization system did not indicate the presence of residual pressure in the cabin.

Relevant Service Information

Airbus has issued Service Bulletins A300–21–0131, Revision 01, dated January 6, 2005; A300–21–6050, Revision 01, dated December 17, 2004; and A310–21–2063, Revision 01, dated January 6, 2005. The service bulletins describe procedures for replacing the existing cabin altitude indicator in the cabin pressure control panel with a new improved cabin altitude indicator. The new cabin altitude indicator introduces a stop in the needle driving mechanism to limit the needle position near 5,000 feet in case of extreme low altitude. (A stop already exists for the ''overhigh'' altitude.) The new cabin altitude indicator is designed to prevent false interpretation of the needle position when altitude goes out of the normal range. 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–2005–027, dated February 16, 2005, to ensure the continued airworthiness of these airplanes in France.

All three service bulletins described above reference Thales Service Bulletin 37000–3–21–001, dated October 8, 2004, as an additional source of service information for replacing the cabin altitude indicator.

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 products 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.

Costs of Compliance

This proposed AD would affect about 194 airplanes of U.S. registry. The proposed actions would take about 7 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $1,246 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $329,994, or $1,701 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–22411; Directorate Identifier 2005–NM–074–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 14, 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 B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622 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 those airplanes on which Airbus Modification 12857 has been incorporated in production.

Unsafe Condition

(d) This AD was prompted by a report of injuries occurring on in-service airplanes when crewmembers forcibly initiated opening of passenger/crew doors against residual pressure causing the doors to rapidly open. We are issuing this AD to prevent injury to crewmembers, and subsequent damage to the airplane caused by the rapid opening of the door.

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.

Replacing the Cabin Altitude Indicator

(f) Within 22 months after the effective date of this AD, replace the cabin altitude indicator (Part Number (P/N) 37000–3) in the cabin pressure control panel with a new improved cabin altitude indicator (P/N 37000–3–01), in accordance with the service bulletins specified in Table 1 of this AD, as applicable.

TABLE 1.—AIRBUS SERVICE BULLETINS

Model	Service bulletin and revision number	Date
Model A300 B2 and A300 B4 series airplanes	A300–21–0131, Revision 01	January 6, 2005.
Model A300 B4–600, B4–600R and F4–600R series airplanes, and Model C4–605R Variant F airplanes.	A300–21–6050, Revision 01	December 17, 2004.
Model A310–200 and –300 series airplanes	A310–21–2063, Revision 01	January 6, 2005.

Note 1: The service bulletins specified in Table 1 of paragraph (f) of this AD describe installation of an in-service modification equivalent to production modification 12857.

Additional Source of Service Information

Note 2: Each of the service bulletins specified in paragraph (f) of this AD refers to Thales Service Bulletin 37000–3–21–001, dated October 8, 2004, as an additional source of service information.

Actions Accomplished in Accordance With Previous Service Information

(g) Replacement of the cabin altitude indicator with a new, improved indicator, in accordance with Airbus Service Bulletin A300–21–6050, dated September 9, 2004; or A310–21–2063, dated September 9, 2004; as applicable, before the effective date of this AD, is acceptable for the compliance with the requirements of paragraph (f) of this AD.

Parts Installation

(h) After the effective date of this AD, no person may install a Thales cabin altitude indicator having part number 37000–3 on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) French airworthiness directive F–2005–027, dated February 16, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on September 6, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18211 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36, 37, 38, 39 and 40

Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications

AGENCY: Commodity Futures Trading Commission.

ACTION: Reopening of comment period.

SUMMARY: On July 11, 2005, the Commission published in the **Federal Register** a request for comments on proposed Technical and Clarifying Amendments to rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications. The proposed amendments are intended to: Clarify and codify acceptable

practices under the Commission's rules for trading facilities, implemented pursuant to the Commodity Futures Modernization Act of 2000, based on the Commission's experience in applying those rules since they were originally adopted in 2001; and revise the application and review process for designation as a derivatives clearing organization. The original comment period closed on September 9, 2005.

By letter dated September 6, 2005, the New York Mercantile Exchange (''NYMEX'') requested that the comment period be extended 15 days, to September 26, 2005. NYMEX requested the additional time because, due to current extreme energy market conditions, the Exchange staff will be unable to properly circulate its response and obtain the necessary committee approvals and other review necessary to file a comment prior to the original close of the comment period on September 9, 2005.

In response to this request, and in order to ensure that an adequate opportunity is provided for the submission of meaningful comments, the Commission will reopen and extend the comment period on the proposed rules.

DATES: Responses must be received by September 26, 2005.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to 202–418–5521 or, by e-mail to *secretary@cftc.gov.* Reference should be made to ''Proposed Clarifying Amendments for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications.''

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel (telephone 202–418–5041, e-mail *dheitman@cftc.gov*), Division of Market Oversight, or Lois Gregory, Special Counsel (telephone 202–418–5521, e-mail *lgregory@cftc.gov*), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on September 8, 2005, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–18174 Filed 9–13–05; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–168892–03]

RIN 1545–BD00

Attained Age of the Insured Under Section 7702; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations explaining how to determine the attained age of an insured for purposes of testing whether a contract qualifies as a life insurance contract for Federal Income Tax purposes.

DATES: The public hearing originally scheduled for September 14, 2005 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Tuesday, May 24, 2005, (70 FR 29671), announced that a public hearing was scheduled for September 14, 2005, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 7702 of the Internal Revenue Code.

The public comment period for these regulations expired on August 24, 2005. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, September 09, 2005, no one has requested to speak. Therefore, the public hearing scheduled for September 14, 2005, is cancelled.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 05–18262 Filed 9–9–05; 2:42 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–UT–0003; FRL–7961–6]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Ogden City Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah. On November 29, 2004, the Governor of Utah submitted revisions to Utah's Rule R307–110–12, ''Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide,'' which incorporates a revised maintenance plan for the Ogden carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity budgets for the years 2005 and 2021. In addition, the Governor submitted revisions to Utah's Rule R307–110–35, ''Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County,'' which incorporates a revised vehicle inspection and maintenance program for Weber County. In this action, EPA is approving the Ogden City CO revised maintenance plan, the revised transportation conformity budgets, the revised vehicle inspection and maintenance program for Weber County, and the revisions to rules R307–110–12 and R307–110–35. This action is being taken under section 110 of the Clean Air Act.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set

forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before October 14, 2005.

ADDRESSES: Submit your comments, identified by RME Docket Number R08-OAR–2005-UT–0003, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Agency Web site: http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail: long.richard@epa.gov, russ.tim@epa.gov,* and *mastrangelo.domenico@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Domenico Mastrangelo, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone (303) 312–6436, and e-mail at: *mastrangelo.domenico@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of the **Federal Register**.

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

Dated: August 17, 2005.

Stephen S. Tuber,

Acting Regional Administrator, Region VIII.

[FR Doc. 05–18233 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[FRL–7968–7]

RIN 2060–AN15

Opportunity to Obtain Information and Present Testimony on Proposed Public Health Environmental Radiation Protection Standards for Yucca Mountain, NV; Notice of Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The Environmental Protection Agency (EPA) will conduct public hearings to receive comments on its proposed amendments to the Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada in Amargosa Valley, NV; Las Vegas, NV; and Washington, DC.

The amended proposed standards were published in the **Federal Register** on August 22, 2005. The 60-day public comment period closes on October 21, 2005.

DATES: The schedule for the hearings is as follows:

- Amargosa Valley, NV, October 3, 2005, from 7 p.m. to 9 p.m. This hearing will be preceded by an information session from 4 p.m. to 5:30 p.m., and a roundtable discussion from 5:30 p.m. to 6:30 p.m.
- Las Vegas, NV, October 4, 2005, from 7 p.m. to 9 p.m. This hearing will be preceded by an information session from 4 p.m. to 5:30 p.m., and a roundtable discussion from 5:30 p.m. to 6:30 p.m.
- Las Vegas, NV, October 5, 2005, from 11 a.m. to 12 a.m. This hearing will be preceded by an information session from 10 a.m. to 11 a.m.
- Washington, DC, October 11, 2 p.m. to 4 p.m. This hearing will be preceded by an information session from 1 p.m. to 2 p.m. Specific locations for each city are detailed in the next section,

ADDRESSES. Procedures for preregistering for and testifying at these public hearings are detailed in the "'Hearings Procedures'" subsection (under Unit II) of the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: EPA's public hearings to receive comments on the Agency's amended proposed radiation protection standards for Yucca Mountain, Nevada will be held on:

- October 3, 2005 at the Amargosa Valley Community Center, 821 East Farm Road, Amargosa Valley, NV;
- October 4 and 5, 2005 at The Cashman Center, 850 North Las Vegas Blvd, Las Vegas, NV;
- October 11, 2005 at the EPA East Building, Room 1153, 1202 Constitution Ave, NW. (Federal Triangle Metro Stop).

For additional information regarding the purpose and format of the hearings, please refer to Unit II of the **SUPPLEMENTARY INFORMATION** section.

Submit your comments, identified by Docket ID No. OAR–2005–0083, by one of the following methods:

- *Electronically:* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case we cannot read your comment due to technical difficulties or we need further information on the substance of your comment. EPA's policy is that we will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment.
- *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:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2005–0083.

• *Fax:* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2005–0083.

• *Surface Mail:* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2005–0083.

• *Hand Delivery or Courier:* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0083. Such deliveries are only accepted during the Docket Center's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments and information to Docket ID No. OAR–2005–0083. 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.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, please refer to Units I.B., I.C., and I.D. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: The official docket is the collection of materials that is available for public viewing at the Air and Radiation 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 Public Reading Room is 202–566–1744. The telephone number for the Air and Radiation Docket is 202–566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, Radiation Protection Division (6608J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *clark.ray@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The DOE is the only entity regulated by these standards. Our standards affect NRC only because, under Section 801(b) of the EnPA, 42 U.S.C. 10141 n., NRC must modify its licensing requirements, as necessary, to make them consistent with our final standards. Before it may accept waste at the Yucca Mountain site, DOE must obtain a license from NRC. DOE will be subject to NRC's modified regulations, which NRC will implement through its licensing proceedings.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* If you submit CBI, clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. Respond to specific questions from the Agency.
9. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response.

C. How Can I View Items in the Docket?

1. *Information Files.* EPA is working with the Lied Library at the University of Nevada-Las Vegas (*http://www.library.unlv.edu/about/hours.html#desks*) and the Amargosa Valley, Nevada public library (*http://www.amargosavalley.com/Library.html*) to provide information files on this rulemaking. These files are not legal dockets, however every effort will be made to put the same material in them as in the official public docket in Washington, DC. The Lied Library information file is at the Research and Information Desk, Government Publications Section (702–895–2200). Hours vary based upon the academic calendar, so we suggest that you call ahead to be certain that the library will be open at the time you wish to visit (for a recorded message, call 702–895–2255).

The other information file is in the Public Library in Amargosa Valley, Nevada (phone 775–372–5340). As of the date of publication, the hours are Monday, Wednesday, and Friday (9 a.m.–5 p.m.); Tuesday and Thursday (9 a.m.–7 p.m.); and Saturday (9 a.m.–1 p.m.). The library is closed on Sunday. These hours can change, so we suggest that you call ahead to be certain when the library will be open.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET). You may use EDOCKET to submit or view 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. To access the docket either go directly to *http://www.epa.gov/edocket* or, from the EPA Internet Home Page (*http://www.epa.gov*), select ''Information Sources'' (in the left column), then ''Dockets,'' then ''EPA Dockets'' (in the first paragraph). For either route, then click on ''Quick Search'' (in the left column). In the search window, type in the docket identification number OAR–2005–0083. Please be patient, the search could take about 30 seconds. This will bring you to the ''Docket Search Results'' page. At that point, click on OAR–2005–0083. From the resulting page, you may access the docket contents (e.g., OAR–2005–0083–0002) by clicking on the icon in the ''Rendition'' column.

D. Can I Access Information by Telephone or via the Internet?

Yes. You may call our toll-free information line (800–331–9477) 24 hours per day. By calling this number, you may listen to a brief update describing our rulemaking activities for Yucca Mountain, leave a message requesting that we add your name and address to the Yucca Mountain mailing list, or request that an EPA staff person return your call. In addition, we have established an electronic listserv through which you can receive electronic updates of activities related to this rulemaking. To subscribe to the listserv, please visit *http://www.epa.gov/radiation/yucca/up-to-date.htm*. Click on ''Yucca Updates Listserv'' and follow to directions there. You also can find information and documents relevant to this rulemaking on the World Wide Web at *http://www.epa.gov/radiation/yucca*. We also recommend that you examine the preamble and regulatory language for the earlier proposed and final rules, which appeared in the **Federal Register** on August 27, 1999 (64 FR 46976) and June 13, 2001 (66 FR 32074), respectively.

II. Meeting Purpose and Format

The meetings will provide opportunities for both informal exchanges of information and formal comments. Meeting formats are as follows:

- *Information Sessions:* an informal opportunity to learn about the standards, meet EPA staff, and ask questions. Comments on the record can also be provided in writing or on tape.
- *Roundtable Dialogues:* a facilitated conversation with EPA staff to discuss the standards and allow opportunities for the public to ask questions of EPA staff, and for EPA to respond. A summary of key points and questions will be recorded for the record.
- *Public Hearings:* a formal opportunity to make verbal statements that will be recorded for the public record. For the convenience of the public, individuals and organizations should schedule a specific time to make their comments (see Hearings Procedures below).

Hearing Procedures

Persons wishing to testify at any of the public hearings are requested to pre-register by calling EPA's toll-free Yucca Mountain Information Line at 1–800–331–9477 at any time. You will be asked to leave a message with the following information:

- Name/Organizational Affiliation (if any).
- Hearing date, location, time(s) available to testify.
- Daytime telephone number.

Your call will be returned within one business day to confirm a scheduled time for testimony. In order to obtain a scheduled speaking time, EPA must receive requests no later than September 30, 2005, for the hearings in Amargosa Valley and Las Vegas, Nevada; and October 7, 2005, for the hearing in Washington, DC. Speakers not registered in advance may register at the door but are not guaranteed the opportunity to testify, depending on time constraints (all individuals will also be able to comment in writing or on tape). Individuals testifying on their own behalf will be allowed 5 minutes. Groups or organizations must designate one individual to testify as the official representative, and each group will be allocated ten minutes for an oral presentation. Individuals and organizations may submit written comments in addition to oral testimony. Time allowed is exclusive of any time consumed by questions from the government panel and answers to these questions. Testimony from individuals and representatives of organizations is limited to one hearing location. In order to ensure that all individuals and groups are given an opportunity to testify, substitutions will not be permitted for any pre-registered person. Registrants will not be permitted to yield their time to other individuals or groups, nor will hearing time be used to "'read into the record'" testimony from individuals not present at the hearings. In the event any person wishes to enter comments for the record, but either cannot or does not appear personally at the hearings, EPA will accept written comments during the hearings and other meetings. These written comments will be considered to the same extent as oral testimony and will be included as part of the official hearings transcripts. The hearing transcript will constitute the official record of the hearings. Written comments submitted outside of the public hearings must be received by EPA Docket OAR–2005–0083 in Washington, DC, by October 21, 2005. All comments received by EPA, whether written or oral, will be given equal consideration in development of the final rule.

Dated: September 8, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–18226 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7968–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 43

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency

(''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add five new sites to the NPL, all to the General Superfund Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 14, 2005.

ADDRESSES: By electronic access: Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key Docket ID No. SFUND–2005–0005. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

By Postal Mail: Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue NW., Washington, DC 20460, Attention Docket ID No. SFUND–2005–0005.

By Express Mail or Courier: Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND–2005–0005. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

By E-Mail: Comments may be e-mailed directly to *superfund.docket@epa.gov*. Cite the Docket ID No. SFUND–2005–0005 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What Are CERCLA and SARA?
B. What Is the NCP?
C. What Is the National Priorities List (NPL)?
D. How Are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. Does the NPL Define the Boundaries of Sites?
G. How Are Sites Removed From the NPL?
H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?
I. What Is the Construction Completion List (CCL)?
II. Public Review/Public Comment
A. May I Review the Documents Relevant to This Proposed Rule?
B. How Do I Access the Documents?
C. What Documents Are Available for Public Review at the Headquarters Docket?
D. What Documents Are Available for Public Review at the Regional Dockets?
E. How Do I Submit My Comments?
F. What Happens to My Comments?
G. What Should I Consider When Preparing My Comments?
H. May I Submit Comments After the Public Comment Period Is Over?
I. May I View Public Comments Submitted by Others?
J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
III. Contents of This Proposed Rule
A. Proposed Additions to the NPL
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
1. What Is Executive Order 12866?
2. Is This Proposed Rule Subject to Executive Order 12866 Review?
B. Paperwork Reduction Act
1. What Is the Paperwork Reduction Act?
2. Does the Paperwork Reduction Act Apply to This Proposed Rule?
C. Regulatory Flexibility Act
1. What Is the Regulatory Flexibility Act?
2. How Has EPA Complied With the Regulatory Flexibility Act?
D. Unfunded Mandates Reform Act
1. What Is the Unfunded Mandates Reform Act (UMRA)?
2. Does UMRA Apply to This Proposed Rule?
E. Executive Order 13132: Federalism
1. What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
1. What Is Executive Order 13175?
2. Does Executive Order 13175 Apply to This Proposed Rule?
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
1. What Is Executive Order 13045?
2. Does Executive Order 13045 Apply to This Proposed Rule?
H. Executive Order 13211
1. What Is Executive Order 13211?
2. Is This Rule Subject to Executive Order 13211?
I. National Technology Transfer and Advancement Act
1. What Is the National Technology Transfer and Advancement Act?
2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant which may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (HRS) score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Pursuant to 42 U.S.C 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the

threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212–637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215–814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404–562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SRC–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312–353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214–665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913–551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–B, Denver, CO 80202–2466; 303–312–6463.

Dawn Richmond, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415–972–3097.

Denise Baker, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206–553–4303.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.* You may use EPA Dockets at *http://www.epa.gov/edocket* to access the index listing of the contents of the Headquarters docket, and to access those documents in the Headquarters docket. Once in the system, select ''search,'' then key in the Docket ID No. SFUND–2005–0005. Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the

Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket (EPA Dockets at *http://www.epa.gov/edocket*) as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the EPA Dockets system, select ''search,'' then key in the Docket ID No. SFUND–2005–0005. For additional information about EPA's electronic public docket, visit EPA Dockets online at *http://www.epa.gov/edocket* or see the May 31, 2002 **Federal Register** (67 FR 38102).

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add five new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

1. What Is the 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 flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. 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.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

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

2. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

E. Executive Order 13132: Federalism

1. What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

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.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has 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, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the

requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

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

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

1. What Is Executive Order 13045?

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

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211

1. What Is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

2. Is This Rule Subject to Executive Order 13211?

This proposed 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 (See discussion of Executive Order 12866 above.)

I. National Technology Transfer and Advancement Act

1. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless 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.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 43, GENERAL SUPERFUND SECTION

State	Site name	City/County
MA	Olin Chemical	Wilmington.
GA	Alternate Energy Resources	Augusta.
IL	Lake Calumet Cluster	Chicago.
NE	West Highway 6 & 281	Hastings.
WA	Quendall Terminals	Renton.

Number of Sites Proposed to General Superfund Section: 5.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 7, 2005.

Barry N. Breen,

Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 05–18236 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2339; MB Docket No. 05–263; RM–11269]

Radio Broadcasting Services; Church Rock and Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Millennium Media, Inc. (''Petitioner''), licensee of Station KYVA–FM, Channel 279C, Grants, New Mexico. Petitioner requests that the Commission reallot Channel 279C from Grants to Church Rock, New Mexico, and modify its license accordingly. The coordinates for Channel 279C at Church Rock are 35–36–18 NL and 108–41–11 WL, with a site restriction of 11.2 kilometers (6.9 miles) northwest of Church Rock.

DATES: Comments must be filed on or before October 17, 2005, and reply comments on or before November 1, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: James P. Riley, Esq., Fletcher, Heald, & Hildreth, PLC; 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–263, adopted August 24, 2005 and released August 26, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Church Rock, Channel 279C and by removing Channel 279C at Grants.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–18027 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2340, MB Docket No. 05–185, RM–11236]

Radio Broadcasting Services; Tenino, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a pending petition for rulemaking filed by Dr. Sandra L. Woodruff to allot Channel 229C3 at Tenino, Washington for failure to state a continuing interest in the requested allotment. The document therefore terminates the proceeding. *See* 70 FR 30050, published May 25, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–185, adopted August 24, 2005, and released August 26, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) since this proposed rule is dismissed, herein.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–18026 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rota Bridled White-Eye (*Zosterops rotensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Rota bridled white-eye (*Zosterops rotensis*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 3,958 acres (ac) (1,602 hectares (ha)) fall within the boundaries of the proposed critical habitat designation on the island of Rota, Commonwealth of the Northern Mariana Islands (CNMI).

DATES: We will consider comments from all interested parties received by November 14, 2005. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by October 31, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

1. You may submit comments and information on this proposed rule to Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office (PIFWO), U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.
2. You may hand-deliver written comments and information to our PIFWO at the address given above.
3. You may send comments by electronic mail (e-mail) to *RBWE_CritHab@fws.gov*. For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.
4. You may fax your comments to 808/792–9581.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at our PIFWO at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, PIFWO, at the above address (telephone: 808/792–9400; facsimile: 808/792–9581).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Rota bridled white-eye habitat, and what features are essential to the conservation of the species and why;

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *RBWE_CritHab@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Rota bridled white-eye'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our PIFWO at 808/792–9400. Please note that the Internet address *RBWE_CritHab@fws.gov* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking 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. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 473 species, or 37 percent of the 1,264 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,264 listed species through

conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Rota bridled white-eye, refer to the final listing rule published in the **Federal Register** on January 22, 2004 (69 FR 3022).

Previous Federal Action

We published the final rule to list the Rota bridled white-eye as endangered in the **Federal Register** on January 22, 2004 (69 FR 3022). This listing was based on a variety of factors including habitat loss and degradation, avian disease, introduced predators, and pesticides. A final recovery plan for this species has not yet been completed. However, a recovery plan is being drafted, and a recovery outline was completed and signed by the Regional Director on October 25, 2004 (Service 2004).

At the time of listing, we concluded that designating critical habitat for the Rota bridled white-eye was prudent and that we would publish a proposed rule in accordance with other priority listing actions when funding became available. On May 20, 2004, a lawsuit was filed against the Department of Interior (DOI) and the Service by the Center for Biological Diversity challenging our failure to propose critical habitat for the Rota bridled white-eye. On September 14, 2004, a stipulated settlement agreement was filed in the U.S. District Court for Hawaii (*Center for Biological Diversity* v. *Norton,* Case No. C–04–00326 SPK LEK) stating that the Service will submit for publication in the **Federal Register** a proposed critical habitat designation for the Rota bridled white-eye no later than September 7, 2005, and a final critical habitat designation no later than September 7, 2006. Between March 10 and 15, 2005, the Service met with resource managers on Rota and Saipan to obtain additional information on management activities and suitability of certain habitat areas for the Rota bridled white-eye. For more information on previous Federal actions, see the final listing rule (January 22, 2004; 69 FR 3022).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant

to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species, and therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by the Commonwealth and local government, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that are essential to the conservation of the Rota bridled white-eye. We have also reviewed available information that pertains to the habitat requirements of the species. This information included: peer-reviewed scientific publications (*e.g.*, Craig and Taisacan 1994; Fancy and Snetsinger 2001; Amidon *et al.* 2004); the final listing rule (January 22, 2004; 69 FR 3022); unpublished reports by the CNMI Division of Fish and Wildlife (DFW) and Service (Engbring *et al.* 1986; Engbring 1987; Reichel and Glass 1988; Engbring 1989); aerial photographs and satellite imagery of Rota; personal communications with scientists and resource managers familiar with the species and habitats; and information obtained during meetings with CNMI officials. Specific information we used from these sources includes estimates of historical and current distribution and abundance, as well as data on resource and habitat requirements. We also considered possible recovery objectives and assessments of habitat necessary to meet these objectives.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

Since the first islandwide forest bird survey in 1982, Rota bridled white-eyes have been recorded primarily above 490 feet (ft) (150 meters (m)) elevation in the Sabana region, the large plateau located in the south-central portion of Rota (Engbring *et al.* 1986; Engbring 1987; Engbring 1989; Amidon 2000; Fancy and Snetsinger 2001; USFWS unpubl. data). Sightings of Rota bridled white-eyes have been recorded in limestone forest (*i.e.*, native forest growing on a limestone substrate), introduced *Acacia confusa* (sosugi) forest, introduced *Leucaena leucocephala* (tangantangan) forest, and secondary vegetation (Craig and Taisacan 1994; Amidon 2000; Fancy and Snetsinger 2001; Amidon unpubl. data). However, the majority of the Rota bridled white-eye sightings have been recorded in limestone forest. For example, of the survey stations where Rota bridled white-eyes were detected in 1982 (n = 44 stations) (Engbring *et al.* 1986) and 1987 (n = 24) (Engbring 1987), 89 percent (n = 39) of the stations in 1982 and 79 percent (n = 19) of the stations in 1987 were classified as limestone forest within 160 ft (50 m) of the survey station by Falanruw *et al.* (1989). Of the remaining stations with Rota bridled white-eye detections in 1982, 8 percent (n = 4) were in areas with mixed vegetation types that included some limestone forest and 2 percent (n = 1) were in forest other habitat types (*e.g.*, *Cocos nucifera* (coconut palm) plantation and secondary vegetation). Of the remaining stations with Rota bridled white-eye detections in 1987, 21 percent (n = 5) were in areas with mixed vegetation types that included some limestone forest. Further, of the stations with Rota bridled white-eye detections in limestone forest in 1982 (n = 39) and 1987 (n = 19), over 60 percent of the areas were dominated by mature limestone forest with large diameter trees (> 30 centimeters [cm] diameter at breast height [dbh]; > 12 inches [in] dbh), high density, and over 70 percent

canopy cover (Falanruw *et al.* 1989). A similar pattern observed during the 1996 survey by Fancy and Snetsinger (2001) was that 73 percent of the white-eye locations (n = 62) were recorded in areas classified as mature limestone forest by Falanruw *et al.* (1989).

In 1998 and 1999, Rota bridled white-eye abundance and habitat relationships were assessed within their current range and across the Sabana region as part of a two-year study by Amidon (2000). Forested areas with high densities of Rota bridled white-eyes (≥2 white-eyes per ha) had relatively high epiphytic plant volumes (approximately 11 percent versus 5 percent in lower-density areas), such as *Asplenium nidus* and *Davallia solida*, and were primarily composed of *Elaeocarpus joga* (yoga), *Hernandia labyrinthica* (oschal), *Merrilliodendron megacarpum* (faniok), *Pandanus tectorius* (kafu), and *Premna obtusifolia* (ahgao) trees. Other tree species that were regularly recorded in Rota bridled white-eye high density areas include *Aglaia mariannensis* (mapunyao), *Artocarpus atilis* (lemai), *Ficus prolixa* (nunu), *F. tinctoria* (hodda), *Guettarda speciosa* (panao), *Macaranga thompsonii* (pengua), and *Pisonia umbellifera*. Within the Rota bridled white-eye's range, white-eyes were found to be more abundant in areas with higher densities of yoga and were also positively correlated with the abundance of faniok. In addition, white-eyes were found to be more abundant across the Sabana in areas with high densities of oschal and where groundcover species of *Elatostema* and *Procris* spp. were present.

Rota bridled white-eyes primarily feed on insects, which are typically gleaned from the leaves and branches of trees in the forest canopy (Craig and Taisacan 1994; Amidon 2000). Of 97 systematically recorded observations of Rota bridled white-eyes foraging, the majority of observations were reported in yoga (34 percent), oschal (13 percent), pengua (10 percent), faniok (9 percent), and ahgao (9 percent) trees (Amidon 2000; F. Amidon, unpubl. data). However, Rota bridled white-eye were also recorded foraging in *Pipturus argenteus* (amahadyan), *Persea americana* (avocado), panao, hodda, sosugi, mapunyao, *Eugenia thompsonii* (atoto), nunu, *Tarenna sambucina* (sumac-lada), and *Tristiropsis obtusangula* trees and *Bambusa vulgaris* (piao) (F. Amidon, unpubl. data). Of these species, only sosugi, avocado, and piao are not native to the island of Rota (Raulerson and Rinehart 1991). In addition, two of these species, oschal and faniok, are found only on Rota in the Sabana region (Amidon 2000). Rota bridled white-eyes have also been observed foraging on the fruits of amahadyan and pengua trees and probing the flowers, presumably to feed on nectar of yoga, oschal, pengua, avocado, ahgao, and atoto trees (F. Amidon, unpubl. data).

Rota bridled white-eyes have been reported nesting in oschal (n = 7 nests), yoga (n = 7), faniok (n = 5), and sosugi (n = 3) between 1,050 and 1,509 ft (320 and 460 m) elevation (Lusk and Taisacan 1997; Amidon *et al.* 2004; F. Amidon, unpubl. data). Pratt (1985) also reported finding a nest in a *Hernandia* sp. tree (presumably oschal based on the location where the nest was found). Nest heights above the ground for 23 nests ranged from 9 to 43 ft (3 to 13 m) with an average height of 26 ft (8 m) (Pratt 1985; Lusk and Taisacan 1997; Amidon *et al.* 2004). The height of 18 nest trees ranged from 9 to 49 ft (3 to 15 m) with an average height of 33 ft (10 m) and the mean diameter at breast height (dbh) for 19 nest trees ranged from 1 to 20 in (2 to 50 cm) with an average diameter of 11 in (28 cm) (Pratt 1985; Lusk and Taisacan 1997; and Amidon *et al.* 2004). The majority of the nests (87 percent, n = 20 nests) were found in areas classified as limestone forest (Falanruw *et al.* 1989). However, nesting was also recorded in sosugi forest, which is dominated by sosugi trees and is found on volcanic soils in the Sabana region. This forest type has a very limited distribution and encompasses approximately 42 ac (17 ha) of the Sabana region.

Based on our current knowledge of the life history, biology, and ecology of the species, we have determined that the primary constituent elements required by the Rota bridled white-eye for the biological needs of foraging, sheltering, roosting, nesting, and rearing of young are:

(1) Forest above 490 ft (150 m) in elevation containing a midstory and canopy layer, high epiphytic plant volume (typically 11 percent), *Elatostema* and *Procris* spp. on the ground, and yoga, oschal, faniok, kafu, and/or ahgao trees as dominant forest components for foraging, sheltering, roosting, nesting, and/or rearing of young. In addition, the habitat should contain the specific forest components for foraging or nesting or both, as follows:

(a) Yoga, oschal, faniok, pengua, ahgao, amahadyan, avocado, hodda, mapunyao, atoto, sosugi, and/or sumac-lada trees, and/or piao, in the canopy or subcanopy for foraging; and

(b) Yoga, oschal, faniok, and/or sosugi trees 10 to 49 ft (3 to 15 m) tall and 1 to 24 in (2 to 60 cm) dbh for nesting.

Criteria Used To Identify Critical Habitat

We considered several factors in identifying and selecting lands proposed for designation as critical habitat for the Rota bridled white-eye. First, we assessed the possible recovery goals for the species to help determine the amount of habitat needed to conserve the species. The recovery considerations are based on minimum viable population information from Reed *et al.* (2003). Reed *et al.* (2003) reviewed minimum viable population sizes for 102 vertebrate species, including one white-eye species, and estimated that 7,000 breeding adults had a 99 percent likelihood of persisting for 40 generations. We then used data on Japanese white-eyes (*Zosterops japonicus*) (van Riper 2000) and silvereyes (*Zosterops lateralis*) (Kikkawa and Wilson 1983; Catterall *et al.* 1989) to apply Reed *et al.'s* findings to the Rota bridled white-eye. We used the data on these two more closely related white-eye species because similar population parameter estimates are not available for the Rota bridled white-eye. Based on the information, a potential benchmark for recovery of this species would be a single population of at least 16,000 Rota bridled white-eyes on the island of Rota (Kikkawa and Wilson 1983; Catterall *et al.* 1989; van Riper 2000; Reed *et al.* 2003; USFWS in prep.). To determine the approximate quantity of habitat that would be occupied by a population of this size, we reviewed Rota bridled white-eye density estimates from 1996 (Fancy and Snetsinger 2001) and 1999 (Amidon 2000) surveys.

The maximum Rota bridled white-eye densities recorded by Fancy and Snetsinger (2001) in 1996, and Amidon (2000) in 1999, were approximately 3 and 4 white-eyes per ac (7 and 10 white-eyes per ha), respectively. The higher Rota bridled white-eye densities reported by Amidon (2000) are likely a result of differing survey methods and not an increase in Rota bridled white-eye densities over the years. The Fancy and Snetsinger (2001) estimates were based on a single set of surveys in the Rota bridled white-eye's range involving area searches. The Amidon (2000) estimates were based on multiple point count surveys conducted in 1998 and 1999.

Based on these density estimates, we believe that 4 white-eyes per ac (10 white-eyes per ha) is a conservative estimate of the number of Rota bridled white-eyes a forested area could support if the threats to the species were controlled. Utilizing this density

estimate, we then divided the population recovery benchmark (16,000 Rota bridled white-eyes) (Kikkawa and Wilson 1983; Catterall *et al.* 1989; van Riper 2000; Reed *et al.* 2003; USFWS, in prep.) by 4 birds per ac (10 birds per ha) and estimated that approximately 4,000 ac (1,600 ha) of forest would be needed to conserve the Rota bridled white-eye. This was then used as a guideline for selecting approximately how much habitat was essential to the Rota bridled white-eye for the proposed designation.

When selecting areas for proposed designation, we first selected all of the forested areas (approximately 638 ac (258 ha)) that contained high densities of Rota bridled white-eyes in 1996 (Fancy and Snetsinger 2001) and 1999 (Amidon 2000). These areas are primarily limestone forest or introduced forest with sosugi trees or piao. We then selected low density areas that had large numbers of white-eyes in 1982, 1987, 1989, and 1994, and large tracts of mature limestone forest identified by Falanruw *et al.* (1989). These areas were prioritized because they contain the primary constituent elements needed by the species and have supported larger white-eye populations. When defining proposed critical habitat boundaries, we avoided areas not known to contain primary constituent elements essential for Rota bridled white-eye conservation, such as agricultural lands and other developed lands.

We are proposing to designate critical habitat on lands that contain the features that are essential to the conservation of the Rota bridled white-eye. As such, these areas have the primary constituent elements described above and were considered to be occupied at the time the species was listed (69 FR 3022; January 22, 2004) (Fancy and Snetsinger 2001). A brief discussion of each area proposed as critical habitat is provided in the unit descriptions below.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the features essential for conservation may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection.

As stated in the final listing rule (69 FR 3022; January 22, 2004), the primary threats to the Rota bridled white-eye are habitat loss and degradation and predation by introduced rats (*Rattus* spp.) and birds (black drongos (*Dicrurus macrocercus*)). In addition, the small population size and limited distribution of the species also make it vulnerable to extinction from random environmental events (*e.g.,* typhoons). To address these threats and conserve the species, the following special management actions may be needed: (1) Protection of the remaining stands of mature limestone forest from clearing and modification; (2) restoration of degraded areas; (3) invasive plant control; and (4) rat and black drongo control. For additional information about the threats to the Rota bridled white-eye, see final listing rule (69 FR 3022; January 22, 2004).

Proposed Critical Habitat Designation

We are proposing one unit as critical habitat of approximately 3,958 ac (1,602 ha) of forested land for the Rota bridled white-eye (see Map 1 in the rule portion of this document). This area, described below, constitutes our best assessment at this time of the areas we determined to be occupied at the time of listing, contain the primary constituent elements, may require special management, and contain the features essential to the conservation of the Rota bridled white-eye. This area contains forested areas on 3,700 ac (1,498 ha) of public and 258 ac (104 ha) of private lands along the slopes and top of the Sabana plateau. Approximately 62 percent (2,292 ac; 928 ha) of the public land within this proposed designation is within the Sabana Conservation Area. This unit is composed of limestone forest, introduced forest, and secondary vegetation that together contain the full range of primary constituent elements needed for long-term conservation of the Rota bridled white-eye. This area was considered occupied at the time the Rota bridled white-eye was listed (69 FR 3022; January 22, 2004) (Fancy and Snetsinger 2001) contains the high-density areas identified by Fancy and Snetsinger (2001), as the only known nesting areas for the Rota bridled white-eye (Pratt 1985; Lusk and Taisacan 1997; Amidon *et al.* 2004); and contains the areas where large numbers of Rota bridled white-eyes have been regularly observed during surveys since 1982.

The proposed critical habitat unit includes all or part of the Telang, Palii, Finata, As Rosalia, Fanlagon, Minachage, Mananana, As Mundo, Uyulan Hulo, Isang, Tagalo Ogso, Sagua Pakpak, As Pupuenge, Lupok, and Alesna regions of Rota (Figure 1 below), which are all considered part of the Sabana region. Each of these individual regions contain or are exposed to the threats to the Rota bridled white-eye (introduced rats, black drongos, and habitat degradation and loss (Engbring *et al.* 1986; Amidon 2000; Fancy and Snetsinger 2001) and require special management (see Special Management Considerations or Protections above). Proposed critical habitat in the Telang and Palii regions includes forested areas between 650 and 1,300 ft (200 and 400 m) elevation. These forested areas include one of the high-density white-eye areas identified by Fancy and Snetsinger (2001) and contain oschal, yoga, and other tree species important to the Rota bridled white-eye (Amidon 2000). Proposed critical habitat in the Finata and As Rosalia regions includes forested areas between 650 and 1,300 ft (200 and 400 m) elevation. These forested areas include one of the high-density white-eye areas identified by Fancy and Snetsinger (2001), locations where Rota bridled white-eyes were observed in 1987 (Engbring 1987), and locations where Rota bridled white-eye nesting was recorded (Amidon *et al.* 2004). These forested areas also contain oschal, yoga, and other tree species and forest components important to the Rota bridled white-eye (Amidon 2000, unpubl. data). Proposed critical habitat in the Fanlagon and Minachage regions includes forested areas between 650 and 1,540 ft (400 and 470 m). These forested areas include locations where large numbers of Rota bridled white-eyes were recorded in 1982 (Engbring *et al.* 1986), 1987 (Engbring 1987), and 1989 (Engbring 1989), and lower numbers were recorded in 1994 (USFWS unpubl. data). These forested areas also contain oschal, yoga, and other trees species and forest components important to the Rota bridled white-eye (Amidon unpubl. data). Proposed critical habitat in the Mananana, As Mundo, and Uyulan Hulo regions includes forested areas between 490 and 1,500 ft (150 and 450 m). These forested areas include two high-density white-eye areas identified by Fancy and Snetsinger (2001), locations where Rota bridled white-eye nesting was recorded (Lusk and Taisacan 1997; Amidon *et al.* 2001), and faniok, oschal, yoga, and other tree species and forest components important to the Rota bridled white-eye (Amidon 2000). Proposed critical habitat in the Isang, Tagalo Ogso, and Sagua Pakpak regions includes forested areas between 650 and 1,300 ft (200 and 400 m). These forested areas include locations where Rota bridled white-eyes were recorded in 1982 (Engbring *et al.* 1986), 1987

(Engbring 1987), and 1989 (Engbring 1989), and oschal, yoga, and other tree species and forest components important to the Rota bridled white-eye (Amidon 2000, unpubl. data). Proposed critical habitat in the As Pupuenge, Lupok, and Alesna regions includes forested areas between approximately 650 and 1,500 ft (200 and 450 m). These forested areas include a high-density white-eye area identified by Fancy and Snetsinger (2001) and locations where Rota bridled white-eye nesting was recorded (Pratt 1985; Amidon *et al.* 2001). These forested areas also include oschal, yoga, sosugi, and other tree species and forest components important to the Rota bridled white-eye (Amidon 2000, unpubl. data).

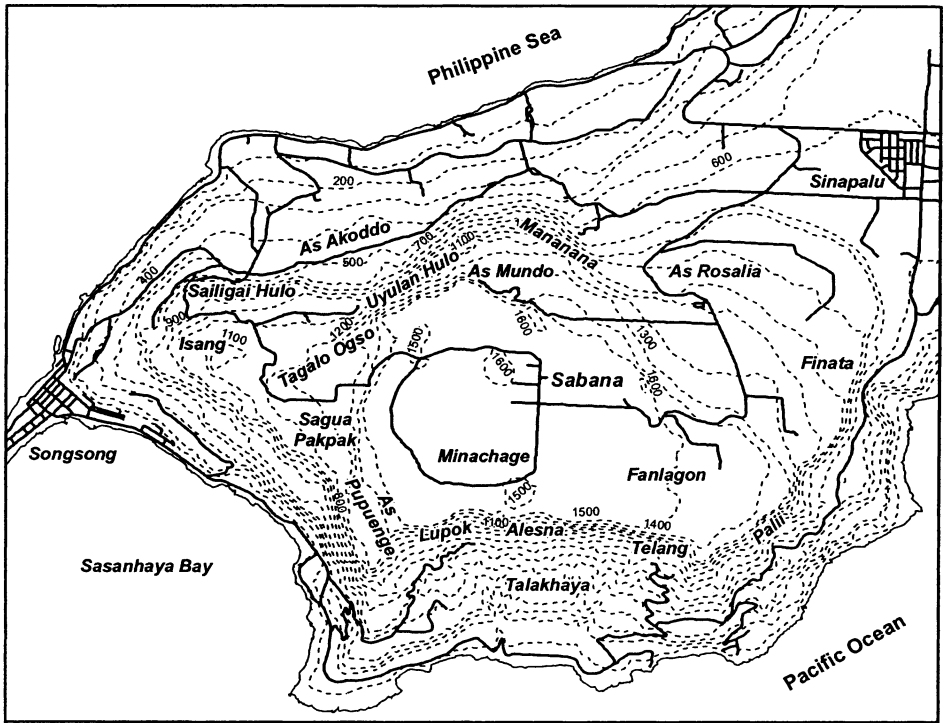

Figure 1
Regions of the Island of Rota, Commonwealth of the Northern Mariana Islands

0 0.5 1 Kilometers
0 0.5 1 Miles
Scale 1:80,000

—— Primary roads
------ 100 ft. elevation contour lines

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In response to the Ninth Circuit's decision on *Gifford Pinchot*, the Service has provided direction regarding the analysis of adverse modification of critical habitat. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions

do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Rota bridled white-eye or its critical habitat will require section 7 consultation. Activities on private or Commonwealth lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not Federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the Rota bridled white-eye. Federal activities that, when carried out, may adversely affect critical habitat for the Rota bridled white-eye include, but are not limited to:

(1) Actions that would reduce the amount of limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include vegetation clearing and fires. These activities could eliminate or reduce foraging and breeding habitat.

(2) Actions that would increase the fragmentation of limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include vegetation clearing and fires. These activities could reduce connectivity between areas utilized by Rota bridled white-eyes for foraging and breeding and increase the amount of forest edge exposed to the potential impacts (tree uprooting, limb damage, etc.) of typhoons thereby further reducing the availability of breeding and foraging habitat.

(3) Actions that would degrade limestone forest above 490 ft (150 m) elevation in the Sabana region. Such activities could include spreading or introducing invasive weed species, like *Coccina grandis* (scarlet gourd), which inhibit the natural regeneration of native forest utilized by Rota bridled white-eyes for breeding and foraging.

We consider the entire critical habitat unit to be occupied by the species because it contains the high-, low-, and very-low density white-eye areas identified by Fancy and Snetsinger (2001; note: authors did not identify any medium-density areas) and areas where white-eyes were reported by Amidon (2000) in 1998 and 1999.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule and adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for Rota bridled white-eye are not owned or managed by the Department of Defense and do not include any Tribal lands or trust resources. Although there have been some initial efforts on an islandwide habitat conservation plan, there are currently no habitat conservation plans for the Rota bridled white-eye. In 1994, a local law was passed to set up a conservation area in the Sabana region of Rota (Sabana Conservation Area). This law required that regulations be developed for the management of the conservation area. In 1995, a Sabana Protected Area Committee was established to develop a management plan and regulations for the area. An initial plan was completed in 1996, but was not implemented because the regulations required to manage the area were not promulgated. At this time no regulations for management of this area have been

developed, and the management plan is now considered obsolete.

We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation.

Economic Analysis

An analysis of the economic impacts of proposed critical habitat for the Rota bridled white-eye will be prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://pacificislands.fws.gov,* or by contacting the Pacific Islands Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and scientific conclusions relevant to the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: *Exsec@iod.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at *http://www.fws.gov/pacific/pacificislands/* or by contacting the Pacific Islands Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the

RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Rota bridled white-eye is not a significant regulatory action under E.O. 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State/Commonwealth, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State/Commonwealth, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State/Commonwealth, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to State/Commonwealth governments.

(b) Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate Commonwealth resource agencies in the CNMI. The designation of critical habitat in areas currently occupied by the Rota bridled white-eye imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on Commonwealth and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist the Commonwealth and local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Rota bridled white-eye.

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State/Commonwealth or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit of the U.S. Court system, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Rota bridled white-eye. Therefore, designation of critical habitat for the Rota bridled white-eye has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this package is the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for ''White-eye, Rota bridled'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
White-eye, Rota bridled.	*Zosterops rotensis* ..	Western Pacific Ocean-U.S.A (Commonwealth of the Northern Mariana Islands).	Entire	E	741	17.95(b)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(b) by adding critical habitat for ''Rota bridled white-eye (*Zosterops rotensis*)'' in the same alphabetical order in which the species appears in the talbe in § 17.11(h), under ''BIRDS'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Rota Bridled White-eye (*Zosterops rotensis*)

(1) A critical habitat unit is depicted for the island of Rota, Commonwealth of the Northern Mariana Islands, on the map below.

(2) The primary constituent elements of critical habitat for the Rota bridled white-eye are the habitat components that provide forest above 490 feet (ft) (150 meters(m)) in elevation containing a midstory and canopy layer, high epiphytic plant volume (typically 11 percent), *Elatostema* and *Procris* spp. on the ground, and *Elaeocarpus joga* (yoga), *Hernandia labyrinthica* (oschal), *Merrilliodendron megacarpum* (faniok), *Pandanus tectorius* (kafu), and/or *Premna obtusifolia* (ahgao) trees as dominant forest components for foraging, sheltering, roosting, nesting, and/or rearing of young. In addition, the habitat should contain the specific forest components for foraging or nesting or both, as follows:

(i) Yoga, oschal, faniok, *Macaranga thompsonii* (pengua), ahgao, *Pipturus argenteus* (amahadyan), *Persea americana* (avocado), *Ficus tinctoria* (hodda), *Aglaia mariannensis* (mapunyao), *Eugenia thompsonii* (atoto), *Acacia confusa* (sosugi), and/or *Tarenna sambucina* (sumac-lada) trees; and/or *Bambusa vulgaris* (piao, bamboo); in the canopy or subcanopy for foraging; or

(ii) Yoga, oschal, faniok, and/or sosugi trees 10 to 49 ft (3 to 15 m) tall and 1 to 24 inches (in) (2 to 60 centimeters (cm)) dbh for nesting.

(iii) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(3) The critical habitat unit description and its map is provided in paragraph (4). Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(4) Rota bridled white-eye critical habitat, Rota, Commonwealth of the Northern Mariana Islands (3,958 ac; 1,602 ha).

(i) Unit consists of 346 points with following coordinates in UTM Zone 55 with the units in meters using World Geodetic System 1984 (WGS84): 300742, 1565012, 300809, 1565217, 300840, 1565285, 300875, 1565341, 300962, 1565420, 300995, 1565444, 301061, 1565473, 301135, 1565490, 301186, 1565494, 301327, 1565491, 301531, 1565451, 301796, 1565425, 301905, 1565419, 301958, 1565425, 302030, 1565456, 302067, 1565466, 302205, 1565482, 302229, 1565471, 302272, 1565429, 302310, 1565416, 302852, 1565346, 302882, 1565343, 302932, 1565348, 302953, 1565356, 302986, 1565377, 303007, 1565407, 303005, 1565510, 302983, 1565616, 302978, 1565666, 302982, 1565740,

302990, 1565763, 303005, 1565777, 303103, 1565824, 303150, 1565828, 303223, 1565806, 303243, 1565792, 303284, 1565740, 303303, 1565731, 303315, 1565733, 303343, 1565752, 303500, 1565896, 303645, 1565995, 303813, 1566125, 303903, 1566164, 304054, 1566243, 304085, 1566255, 304155, 1566270, 304271, 1566306, 304326, 1566311, 304388, 1566328, 304494, 1566336, 304562, 1566352, 304700, 1566368, 304734, 1566365, 304760, 1566355, 304791, 1566336, 304835, 1566299, 304904, 1566293, 304977, 1566261, 305032, 1566256, 305110, 1566231, 305131, 1566220, 305152, 1566197, 305174, 1566158, 305197, 1566090, 305213, 1566016, 305244, 1565964, 305317, 1565923, 305417, 1565815, 305444, 1565800, 305461, 1565775, 305493, 1565766, 305608, 1565782, 305678, 1565798, 305840, 1565858, 305947, 1565890, 306134, 1565992, 306230, 1566039, 306271, 1566055, 306365, 1566071, 306500, 1566077, 306557, 1566089, 306588, 1566105, 306773, 1566245, 306819, 1566265, 307118, 1566324, 307158, 1566325, 307191, 1566320, 307249, 1566295, 307359, 1566230, 307407, 1566207, 307778, 1566099, 307843, 1566062, 307898, 1566047, 307941, 1566020, 307999, 1566003, 308109, 1565940, 308162, 1565898, 308260, 1565834, 308407, 1565674, 308437, 1565635, 308458, 1565596, 308529, 1565323, 308544, 1565200, 308543, 1565150, 308537, 1565112, 308472, 1564974, 308423, 1564834, 308409, 1564746, 308394, 1564555, 308385, 1564519, 308306, 1564339, 308149, 1563842, 308086, 1563674, 308065, 1563629, 308013, 1563560, 308004, 1563528, 307995, 1563514, 307953, 1563481, 307857, 1563392, 307835, 1563367, 307826, 1563347, 307816, 1563286, 307803, 1563028, 307795, 1562975, 307783, 1562966, 307725, 1562954, 307691, 1562925, 307691, 1562911, 307717, 1562869, 307712, 1562856, 307699, 1562846, 307656, 1562826, 307555, 1562804, 307518, 1562768, 307480, 1562756, 307447, 1562734, 307353, 1562655, 307323, 1562617, 307307, 1562586, 307300, 1562465, 307289, 1562432, 307266, 1562397, 307216, 1562348, 307176, 1562324, 307120, 1562306, 307027, 1562297, 307000, 1562286, 306970, 1562267, 306923, 1562220, 306885, 1562107, 306868, 1562080, 306853, 1562074, 306826, 1562082, 306799, 1562099, 306759, 1562155, 306731, 1562179, 306698, 1562219, 306678, 1562233, 306657, 1562234, 306620, 1562216, 306571, 1562209, 306513, 1562179, 306481, 1562177, 306476, 1562191, 306472, 1562272, 306434, 1562361, 306391, 1562443, 306373, 1562497, 306222, 1562602, 306206, 1562602, 306180, 1562585, 306166, 1562534, 306144, 1562526, 306121, 1562532, 306080, 1562567, 306054, 1562574, 305964, 1562570, 305912, 1562563, 305849, 1562573, 305808, 1562551, 305733, 1562553, 305722, 1562561, 305714, 1562595, 305698, 1562604, 305684, 1562596, 305672, 1562575, 305662, 1562500, 305655, 1562483, 305646, 1562484, 305635, 1562495, 305625, 1562531, 305615, 1562544, 305588, 1562564, 305567, 1562567, 305551, 1562561, 305517, 1562518, 305486, 1562501, 305461, 1562470, 305453, 1562465, 305438, 1562464, 305415, 1562480, 305407, 1562505, 305410, 1562537, 305422, 1562585, 305421, 1562606, 305413, 1562613, 305386, 1562616, 305373, 1562624, 305347, 1562674, 305328, 1562692, 305291, 1562716, 305257, 1562722, 305232, 1562721, 305219, 1562712, 305204, 1562692, 305189, 1562688, 305160, 1562698, 305110, 1562731, 305083, 1562735, 305065, 1562733, 305037, 1562717, 305006, 1562668, 304981, 1562647, 304958, 1562638, 304924, 1562635, 304890, 1562598, 304856, 1562597, 304819, 1562606, 304787, 1562629, 304737, 1562632, 304719, 1562648, 304811, 1562704, 304812, 1562719, 304793, 1562738, 304770, 1562750, 304721, 1562752, 304653, 1562789, 304603, 1562797, 304550, 1562793, 304520, 1562769, 304504, 1562762, 304464, 1562761, 304432, 1562770, 304403, 1562772, 304355, 1562769, 304332, 1562760, 304325, 1562751, 304323, 1562731, 304327, 1562719, 304343, 1562698, 304348, 1562679, 304349, 1562583, 304356, 1562513, 304351, 1562493, 304270, 1562434, 304223, 1562419, 304206, 1562376, 304186, 1562353, 304126, 1562326, 304055, 1562283, 303995, 1562276, 303953, 1562281, 303890, 1562321, 303864, 1562358, 303830, 1562380, 303825, 1562390, 303827, 1562400, 303835, 1562405, 303860, 1562408, 303865, 1562417, 303863, 1562438, 303826, 1562510, 303811, 1562567, 303783, 1562600, 303768, 1562605, 303669, 1562602, 303597, 1562589, 303549, 1562599, 303490, 1562569, 303399, 1562504, 303334, 1562463, 303311, 1562441, 303239, 1562346, 303088, 1562240, 303073, 1562218, 303048, 1562210, 303010, 1562207, 302957, 1562190, 302925, 1562192, 302908, 1562205, 302903, 1562216, 302906, 1562269, 302895, 1562348, 302883, 1562361, 302835, 1562375, 302814, 1562391, 302792, 1562456, 302766, 1562563, 302712, 1562684, 302665, 1562811, 302645, 1562883, 302595, 1563127, 302565, 1563228, 302535, 1563275, 302436, 1563381, 302380, 1563478, 302354, 1563506, 302333, 1563519, 302254, 1563541, 302185, 1563577, 302125, 1563592, 302080, 1563615, 302015, 1563692, 301971, 1563777, 301951, 1563806, 301890, 1563864, 301836, 1563908, 301750, 1563946, 301723, 1563952, 301650, 1563960, 301611, 1563981, 301594, 1564000, 301585, 1564023, 301584, 1564061, 301593, 1564112, 301585, 1564135, 301474, 1564241, 301450, 1564254, 301413, 1564259, 301352, 1564251, 301311, 1564237, 301295, 1564239, 301214, 1564294, 301096, 1564399, 300966, 1564483, 300945, 1564505, 300922, 1564541, 300892, 1564569, 300859, 1564634, 300808, 1564710, 300804, 1564729, 300806, 1564769, 300802, 1564795, 300740, 1564944, 300737, 1564975.

(ii) Not including 13 areas:

(A) Bounded by the following 13 points (2 ac; 1 ha): 301307, 1564935; 301288, 1564908; 301291, 1564898; 301301, 1564889; 301354, 1564890; 301410, 1564877; 301424, 1564879; 301460, 1564899; 301472, 1564922; 301468, 1564941; 301452, 1564950; 301382, 1564933; 301335, 1564939.

(B) Bounded by the following 48 points (39 ac; 16 ha): 301471, 1564593; 301458, 1564567; 301463, 1564557; 301550, 1564532; 301578, 1564506; 301598, 1564501; 301639, 1564501; 301668, 1564487; 301760, 1564465; 301797, 1564449; 301803, 1564442; 301802, 1564433; 301789, 1564410; 301787, 1564397; 301798, 1564388; 301812, 1564387; 301824, 1564395; 301844, 1564426; 301857, 1564432; 301920, 1564441; 301980, 1564460; 302041, 1564447; 302081, 1564449; 302122, 1564459; 302169, 1564479; 302242, 1564523; 302338, 1564565; 302377, 1564592; 302400, 1564618; 302417, 1564647; 302427, 1564679; 302426, 1564699; 302418, 1564724; 302403, 1564740; 302363, 1564757; 302332, 1564757; 302269, 1564741; 302146, 1564681; 302059, 1564655; 302017, 1564655; 301908, 1564682; 301866, 1564674; 301831, 1564660; 301713, 1564582; 301660, 1564566; 301613, 1564561; 301554, 1564564; 301516, 1564572.

(C) Bounded by the following 47 points (58 ac; 23 ha): 301566, 1564945: 301569, 1564920; 301578, 1564904; 301624, 1564888; 301649, 1564857; 301660, 1564850; 301679, 1564850; 301706, 1564888; 301726, 1564892; 301744, 1564883; 301754, 1564864; 301759, 1564836; 301777, 1564825; 301824, 1564810; 301963, 1564798; 301986, 1564807; 302011, 1564845; 302030, 1564859; 302105, 1564881; 302150, 1564885; 302309, 1564864;

302407, 1564883; 302422, 1564895; 302444, 1564926; 302462, 1564938; 302486, 1564939; 302550, 1564927; 302646, 1564928; 302700, 1564940; 302712, 1564951; 302716, 1564964; 302713, 1564975; 302696, 1564984; 302614, 1564988; 302602, 1564995; 302592, 1565021; 302584, 1565102; 302572, 1565118; 302490, 1565138; 302195, 1565151; 302135, 1565146; 302088, 1565135; 301955, 1565082; 301722, 1565014; 301662, 1564986; 301608, 1564971.

(D) Bounded by the following 61 points (91 ac; 37 ha): 302150, 1564098; 302172, 1564039; 302208, 1564002; 302245, 1563984; 302303, 1563975; 302364, 1563928; 302390, 1563916; 302429, 1563913; 302494, 1563933; 302545, 1563926; 302576, 1563927; 302602, 1563941; 302629, 1563977; 302641, 1563982; 302686, 1563948; 302701, 1563945; 302715, 1563951; 302735, 1563975; 302766, 1564034; 302757, 1564078; 302769, 1564119; 302759, 1564172; 302762, 1564208; 302776, 1564221; 302822, 1564235; 302842, 1564246; 302867, 1564270; 302899, 1564315; 302905, 1564345; 302891, 1564382; 302917, 1564467; 302950, 1564548; 303012, 1564647; 303033, 1564728; 303060, 1564765; 303059, 1564787; 303044, 1564799; 303024, 1564795; 302973, 1564763; 302909, 1564709; 302872, 1564700; 302839, 1564684; 302751, 1564683; 302736, 1564669; 302709, 1564620; 302682, 1564601; 302570, 1564563; 302481, 1564539; 302458, 1564528; 302444, 1564509; 302424, 1564435; 302401, 1564389; 302386, 1564348; 302375, 1564301; 302378, 1564265; 302374, 1564251; 302287, 1564174; 302272, 1564172; 302224, 1564179; 302187, 1564171; 302176, 1564161.

(E) Bounded by the following 319 points (677 ac; 274 ha): 302943, 1564065; 302923, 1564061; 302919, 1564054; 302936, 1564038; 302987, 1564019; 303009, 1563991; 303047, 1563971; 303060, 1563954; 303062, 1563939; 303054, 1563879; 303060, 1563827; 303074, 1563808; 303107, 1563796; 303113, 1563780; 303110, 1563765; 303090, 1563727; 303109, 1563690; 303085, 1563639; 303085, 1563600; 303092, 1563584; 303116, 1563562; 303132, 1563539; 303131, 1563504; 303193, 1563466; 303207, 1563465; 303249, 1563476; 303272, 1563471; 303303, 1563452; 303334, 1563412; 303350, 1563400; 303360, 1563399; 303390, 1563413; 303410, 1563410; 303416, 1563402; 303410, 1563386; 303415, 1563373; 303455, 1563344; 303466, 1563282; 303479, 1563248; 303497, 1563232; 303553, 1563212; 303560, 1563195; 303565, 1563150; 303572, 1563128; 303595, 1563106; 303623, 1563095; 303655, 1563097; 303684, 1563125; 303721, 1563132; 303734, 1563152; 303740, 1563192; 303780, 1563201; 303789, 1563208; 303775, 1563236; 303772, 1563257; 303803, 1563373; 303799, 1563391; 303773, 1563433; 303765, 1563441; 303742, 1563447; 303671, 1563435; 303653, 1563441; 303652, 1563453; 303675, 1563474; 303807, 1563534; 303869, 1563577; 303897, 1563608; 303953, 1563714; 303979, 1563736; 304071, 1563770; 304155, 1563793; 304249, 1563795; 304335, 1563782; 304405, 1563794; 304429, 1563789; 304479, 1563751; 304493, 1563746; 304582, 1563737; 304624, 1563741; 304690, 1563727; 304750, 1563734; 304786, 1563719; 304794, 1563708; 304794, 1563686; 304765, 1563636; 304758, 1563605; 304723, 1563588; 304708, 1563573; 304683, 1563490; 304667, 1563465; 304657, 1563459; 304641, 1563459; 304611, 1563483; 304586, 1563482; 304570, 1563497; 304531, 1563517; 304489, 1563530; 304474, 1563529; 304461, 1563512; 304434, 1563423; 304413, 1563389; 304385, 1563357; 304367, 1563345; 304338, 1563334; 304314, 1563311; 304244, 1563308; 304171, 1563273; 304107, 1563257; 304013, 1563250; 303998, 1563253; 303964, 1563283; 303940, 1563294; 303926, 1563349; 303874, 1563345; 303858, 1563339; 303850, 1563329; 303844, 1563275; 303852, 1563237; 303892, 1563228; 303950, 1563198; 303968, 1563194; 303990, 1563158; 304018, 1563160; 304049, 1563155; 304099, 1563163; 304201, 1563127; 304213, 1563109; 304216, 1563048; 304223, 1563035; 304234, 1563028; 304252, 1563031; 304314, 1563067; 304321, 1563065; 304324, 1563051; 304332, 1563043; 304394, 1563024; 304397, 1563008; 304383, 1562960; 304388, 1562898; 304391, 1562885; 304406, 1562879; 304436, 1562896; 304481, 1562945; 304494, 1562947; 304563, 1562939; 304607, 1562972; 304674, 1563009; 304740, 1563024; 304799, 1563053; 304847, 1563054; 304864, 1563059; 304873, 1563073; 304875, 1563091; 304856, 1563155; 304857, 1563163; 304877, 1563174; 304911, 1563180; 304931, 1563177; 304955, 1563165; 304966, 1563164; 305029, 1563211; 305036, 1563224; 305037, 1563241; 305026, 1563279; 305044, 1563311; 305043, 1563342; 305006, 1563380; 304967, 1563439; 304948, 1563446; 304902, 1563445; 304892, 1563451; 304895, 1563457; 304926, 1563472; 304937, 1563482; 304942, 1563501; 304936, 1563514; 304918, 1563519; 304883, 1563494; 304868, 1563502; 304862, 1563511; 304865, 1563525; 304899, 1563563; 304894, 1563570; 304855, 1563591; 304847, 1563606; 304876, 1563674; 304887, 1563732; 304894, 1563743; 304911, 1563750; 304920, 1563748; 304943, 1563727; 304977, 1563752; 305046, 1563746; 305062, 1563751; 305081, 1563784; 305100, 1563805; 305149, 1563831; 305164, 1563844; 305205, 1563919; 305255, 1563967; 305269, 1563987; 305269, 1564034; 305279, 1564060; 305293, 1564075; 305325, 1564089; 305336, 1564100; 305325, 1564120; 305311, 1564131; 305291, 1564139; 305280, 1564149; 305266, 1564195; 305254, 1564212; 305201, 1564236; 305185, 1564253; 305176, 1564277; 305180, 1564335; 305176, 1564354; 305166, 1564368; 305130, 1564386; 305107, 1564406; 305061, 1564482; 304984, 1564553; 304979, 1564566; 304988, 1564594; 304985, 1564605; 304954, 1564615; 304930, 1564637; 304852, 1564669; 304771, 1564722; 304744, 1564766; 304716, 1564763; 304681, 1564794; 304673, 1564810; 304669, 1564832; 304689, 1564912; 304677, 1564981; 304665, 1564999; 304629, 1565015; 304614, 1565043; 304600, 1565052; 304583, 1565047; 304575, 1565037; 304569, 1565014; 304570, 1564995; 304579, 1564967; 304607, 1564940; 304613, 1564924; 304604, 1564909; 304581, 1564899; 304558, 1564896; 304503, 1564900; 304444, 1564919; 304385, 1564919; 304348, 1564928; 304331, 1564937; 304326, 1564948; 304338, 1565014; 304332, 1565017; 304322, 1565011; 304288, 1564957; 304280, 1564975; 304262, 1564978; 304255, 1564985; 304253, 1565027; 304242, 1565034; 304228, 1565035; 304220, 1565029; 304215, 1565012; 304207, 1565004; 304173, 1565015; 304109, 1565006; 304103, 1564998; 304090, 1564952; 304080, 1564937; 304053, 1564920; 303995, 1564904; 303967, 1564847; 303956, 1564836; 303943, 1564836; 303926, 1564850; 303913, 1564855; 303887, 1564852; 303868, 1564842; 303857, 1564820; 303859, 1564799; 303876, 1564791; 303945, 1564781; 303949, 1564777; 303946, 1564767; 303933, 1564756; 303912, 1564752; 303868, 1564759; 303849, 1564756; 303771, 1564713; 303710, 1564691; 303655, 1564659; 303564, 1564631; 303553, 1564633; 303546, 1564643; 303521, 1564743; 303499, 1564757; 303480, 1564756; 303454, 1564736; 303441, 1564711; 303404, 1564670; 303398, 1564657; 303436, 1564543; 303438, 1564509; 303429, 1564479; 303393, 1564423; 303296, 1564316; 303282, 1564278; 303250, 1564261; 303236, 1564193; 303175, 1564150; 303082, 1564137; 303062,

1564125; 303052, 1564107; 303036, 1564092.

(F) Bounded by the following 26 points (20 ac; 8 ha): 304256, 1565414; 304308, 1565357; 304346, 1565330; 304472, 1565298; 304590, 1565251; 304620, 1565250; 304645, 1565261; 304690, 1565255; 304727, 1565280; 304777, 1565289; 304783, 1565297; 304763, 1565363; 304744, 1565464; 304735, 1565486; 304715, 1565507; 304686, 1565508; 304660, 1565521; 304578, 1565501; 304541, 1565485; 304509, 1565451; 304503, 1565402; 304498, 1565394; 304485, 1565388; 304457, 1565388; 304410, 1565414; 304382, 1565421.

(G) Bounded by the following 35 points (11 ac; 4 ha): 305091, 1563607; 305046, 1563577; 305022, 1563553; 305015, 1563522; 305001, 1563499; 305002, 1563487; 305012, 1563476; 305061, 1563454; 305086, 1563459; 305114, 1563484; 305141, 1563495; 305168, 1563525; 305195, 1563534; 305247, 1563543; 305243, 1563575; 305278, 1563639; 305274, 1563687; 305262, 1563722; 305263, 1563729; 305291, 1563736; 305355, 1563721; 305372, 1563721; 305382, 1563732; 305381, 1563761; 305368, 1563775; 305332, 1563784; 305308, 1563782; 305274, 1563768; 305234, 1563743; 305202, 1563707; 305158, 1563671; 305150, 1563657; 305149, 1563633; 305132, 1563611; 305115, 1563602.

(H) Bounded by the following 18 points (9 ac; 4 ha): 305348, 1565123; 305320, 1565080; 305322, 1565051; 305361, 1565002; 305416, 1564959; 305431, 1564953; 305452, 1564953; 305503, 1564970; 305537, 1564975; 305554, 1564987; 305570, 1565010; 305577, 1565037; 305570, 1565071; 305550, 1565102; 305523, 1565121; 305499, 1565129; 305412, 1565142; 305390, 1565140.

(I) Bounded by the following 96 points (52 ac, 21 ha): 305681, 1564571; 305654, 1564580; 305620, 1564578; 305565, 1564595; 305547, 1564592; 305537, 1564571; 305532, 1564484; 305527, 1564469; 305511, 1564467; 305502, 1564474; 305486, 1564499; 305467, 1564500; 305456, 1564489; 305453, 1564478; 305455, 1564431; 305458, 1564418; 305469, 1564405; 305527, 1564420; 305567, 1564424; 305612, 1564419; 305641, 1564401; 305646, 1564382; 305644, 1564358; 305620, 1564264; 305626, 1564238; 305640, 1564232; 305731, 1564234; 305750, 1564230; 305757, 1564225; 305745, 1564207; 305722, 1564193; 305699, 1564192; 305645, 1564203; 305623, 1564195; 305619, 1564181; 305622, 1564158; 305646, 1564097; 305677, 1564083; 305781, 1564061; 305789, 1564055; 305793, 1564024; 305819, 1563988; 305881, 1563974; 305897, 1563964; 305938, 1563897; 305946, 1563858; 305951, 1563774; 305948, 1563696; 305939, 1563637; 305922, 1563609; 305861, 1563583; 305831, 1563543; 305806, 1563520; 305798, 1563498; 305837, 1563315; 305862, 1563291; 305893, 1563286; 305902, 1563291; 305907, 1563301; 305906, 1563358; 305950, 1563453; 305953, 1563477; 305949, 1563508; 305954, 1563523; 305960, 1563526; 305994, 1563522; 306046, 1563531; 306057, 1563540; 306063, 1563555; 306110, 1563573; 306118, 1563592; 306118, 1563606; 306105, 1563642; 306071, 1563662; 306059, 1563682; 306062, 1563709; 306080, 1563772; 306077, 1563819; 306064, 1563889; 306006, 1564047; 306002, 1564117; 305990, 1564133; 305961, 1564145; 305848, 1564153; 305822, 1564158; 305803, 1564170; 305793, 1564191; 305793, 1564205; 305832, 1564256; 305838, 1564283; 305835, 1564313; 305821, 1564340; 305807, 1564356; 305712, 1564414; 305673, 1564451; 305665, 1564483.

(J) Bounded by the following 134 points (92 ac; 37 ha): 306267, 1565331; 306353, 1565325; 306341, 1565326; 306400, 1565325; 306433, 1565329; 306453, 1565341; 306484, 1565382; 306514, 1565388; 306559, 1565384; 306598, 1565356; 306621, 1565346; 306716, 1565329; 306720, 1565333; 306720, 1565374; 306729, 1565422; 306716, 1565443; 306684, 1565448; 306681, 1565467; 306688, 1565481; 306699, 1565487; 306755, 1565496; 306816, 1565485; 306955, 1565429; 307014, 1565397; 307111, 1565330; 307119, 1565340; 307118, 1565350; 307055, 1565408; 307034, 1565438; 307017, 1565445; 307005, 1565460; 306968, 1565468; 306955, 1565488; 306957, 1565495; 306969, 1565498; 307025, 1565488; 307029, 1565496; 307026, 1565526; 307050, 1565540; 307066, 1565542; 307204, 1565460; 307258, 1565412; 307269, 1565394; 307276, 1565368; 307288, 1565356; 307369, 1565327; 307451, 1565259; 307509, 1565229; 307537, 1565210; 307570, 1565178; 307610, 1565126; 307746, 1565004; 307839, 1564896; 307872, 1564877; 307878, 1564878; 307882, 1564884; 307884, 1564905; 307873, 1564932; 307783, 1565058; 307734, 1565112; 307580, 1565259; 307319, 1565473; 307080, 1565610; 307035, 1565624; 307014, 1565621; 306976, 1565592; 306934, 1565568; 306887, 1565525; 306868, 1565520; 306815, 1565528; 306718, 1565559; 306626, 1565562; 306510, 1565585; 306399, 1565586; 306337, 1565579; 306331, 1565589; 306345, 1565658; 306354, 1565736; 306349, 1565806; 306352, 1565829; 306383, 1565896; 306399, 1565902; 306440, 1565898; 306438, 1565928; 306417, 1565948; 306391, 1565949; 306277, 1565911; 306256, 1565896; 306205, 1565844; 306173, 1565823; 306154, 1565817; 306115, 1565820; 306094, 1565817; 306042, 1565781; 305989, 1565708; 305972, 1565692; 305953, 1565683; 305910, 1565671; 305870, 1565667; 305844, 1565673; 305795, 1565705; 305766, 1565717; 305719, 1565718; 305693, 1565710; 305684, 1565703; 305674, 1565679; 305677, 1565641; 305689, 1565625; 305724, 1565609; 305766, 1565605; 305890, 1565626; 305937, 1565602; 305969, 1565601; 305988, 1565595; 306002, 1565572; 305991, 1565555; 305968, 1565549; 305920, 1565551; 305909, 1565543; 305911, 1565530; 305918, 1565520; 305951, 1565499; 305972, 1565493; 306026, 1565498; 306076, 1565493; 306107, 1565505; 306133, 1565507; 306178, 1565494; 306219, 1565475; 306231, 1565463; 306221, 1565427; 306232, 1565386; 306235, 1565356; 306242, 1565346.

(K) Bounded by the following 207 points (355 ac, 144 ha): 305824, 1565279; 305789, 1565258; 305784, 1565251; 305785, 1565239; 305801, 1565217; 305929, 1565095; 305932, 1565086; 305918, 1565072; 305912, 1565059; 305919, 1565045; 306024, 1564981; 306114, 1564950; 306143, 1564935; 306189, 1564892; 306228, 1564832; 306234, 1564811; 306232, 1564774; 306229, 1564764; 306218, 1564755; 306172, 1564745; 306107, 1564754; 306095, 1564751; 306119, 1564647; 306140, 1564643; 306179, 1564618; 306271, 1564573; 306302, 1564551; 306326, 1564524; 306369, 1564511; 306391, 1564451; 306411, 1564417; 306416, 1564385; 306451, 1564361; 306476, 1564320; 306512, 1564285; 306520, 1564269; 306525, 1564238; 306571, 1564226; 306588, 1564168; 306658, 1564143; 306684, 1564127; 306701, 1564108; 306706, 1564092; 306702, 1564075; 306686, 1564051; 306674, 1564042; 306639, 1564039; 306558, 1564052; 306546, 1564039; 306554, 1564023; 306591, 1564006; 306708, 1563983; 306772, 1563964; 306791, 1563953; 306807, 1563932; 306831, 1563941; 306861, 1563968; 306910, 1563986; 306925, 1563998; 306936, 1564022; 306933, 1564035; 306884, 1564066; 306859, 1564062; 306794, 1564101; 306774, 1564120; 306763, 1564146; 306750, 1564158; 306777, 1564193; 306784, 1564210; 306782, 1564217; 306757, 1564222; 306745, 1564235; 306741, 1564248; 306773, 1564278; 306794,

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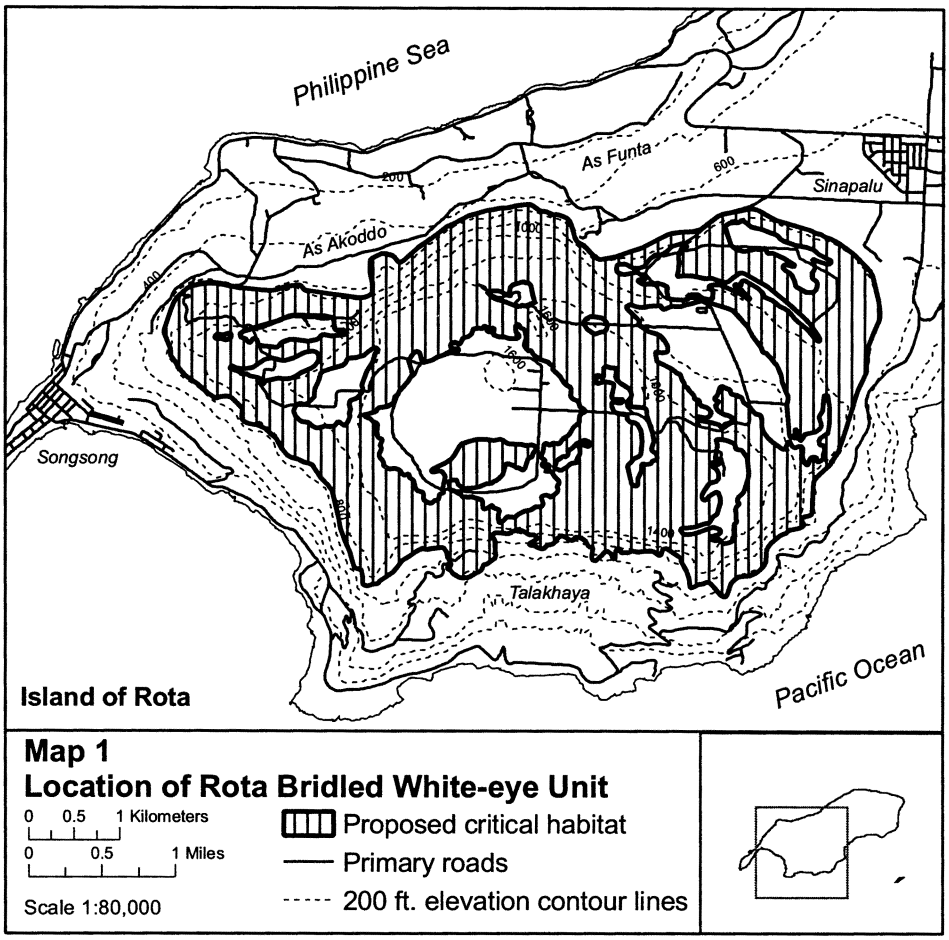
(L) Bounded by the following 107 points (81 ac, 33 ha): 306372, 1562797; 306403, 1562764; 306427, 1562755; 306453, 1562754; 306508, 1562763; 306586, 1562785; 306716, 1562834; 306746, 1562833; 306800, 1562809; 306806, 1562794; 306805, 1562779; 306797, 1562766; 306785, 1562758; 306715, 1562738; 306706, 1562725; 306708, 1562711; 306724, 1562696; 306753, 1562687; 306769, 1562689; 306785, 1562702; 306796, 1562704; 306807, 1562695; 306827, 1562660; 306836, 1562654; 306883, 1562662; 306923, 1562677; 306933, 1562691; 306933, 1562707; 306939, 1562720; 306971, 1562743; 306951, 1562767; 306947, 1562793; 306958, 1562864; 306987, 1562890; 306977, 1562913; 306976, 1562986; 306970, 1563033; 306978, 1563053; 307007, 1563079; 307014, 1563093; 306993, 1563114; 306991, 1563142; 307005, 1563172; 307041, 1563196; 307061, 1563224; 307109, 1563376; 307115, 1563433; 307101, 1563555; 307090, 1563605; 307081, 1563625; 307041, 1563678; 306975, 1563692; 306968, 1563704; 306961, 1563741; 306940, 1563760; 306895, 1563780; 306846, 1563792; 306781, 1563803; 306764, 1563798; 306762, 1563787; 306773, 1563735; 306750, 1563589; 306754, 1563583; 306775, 1563588; 306787, 1563583; 306803, 1563565; 306805, 1563550; 306795, 1563527; 306784, 1563519; 306758, 1563521; 306724, 1563550; 306718, 1563548; 306714, 1563525; 306726, 1563496; 306757, 1563475; 306774, 1563453; 306785, 1563420; 306786, 1563371; 306775, 1563350; 306757, 1563337; 306692, 1563316; 306669, 1563300; 306622, 1563226; 306605, 1563190; 306604, 1563169; 306612, 1563144; 306622, 1563134; 306639, 1563129; 306654, 1563136; 306676, 1563170; 306707, 1563193; 306752, 1563216; 306766, 1563218; 306780, 1563215; 306800, 1563165; 306808, 1563115; 306774, 1562987; 306764, 1562973; 306739, 1562961; 306723, 1562946; 306693, 1562893; 306677, 1562877; 306629, 1562869; 306539, 1562836; 306441, 1562823; 306394, 1562826; 306382, 1562817.

(M) Bounded by the following 69 points (47 ac, 30 ha): 306858, 1566129; 306891, 1566009; 306917, 1565936; 306929, 1565916; 306982, 1565882; 307028, 1565864; 307063, 1565860; 307180, 1565888; 307248, 1565881; 307286, 1565897; 307298, 1565886; 307308, 1565851; 307318, 1565838; 307332, 1565837; 307358, 1565846; 307377, 1565842; 307505, 1565779; 307601, 1565717; 307612, 1565701; 307601, 1565695; 307534, 1565713; 307503, 1565714; 307484, 1565702; 307479, 1565684; 307498, 1565657; 307547, 1565628; 307571, 1565607; 307606, 1565538; 307618, 1565489; 307628, 1565475; 307745, 1565409; 307789, 1565409; 307829, 1565429; 307844, 1565447; 307857, 1565486; 307858, 1565512; 307852, 1565527; 307805, 1565571; 307794, 1565595; 307797, 1565619; 307825, 1565662; 307834, 1565689; 307808, 1565748; 307802, 1565778; 307813, 1565781; 307892, 1565745; 307958, 1565725; 307992, 1565724; 308008, 1565734; 308007, 1565752; 307998, 1565762; 307875, 1565825; 307834, 1565866; 307814, 1565879; 307743, 1565910; 307628, 1565928; 307491, 1565976; 307455, 1565998; 307428, 1566032; 307412, 1566044; 307254, 1566105; 307143, 1566130; 307118, 1566145; 307054, 1566200; 307032, 1566199; 306993, 1566178; 306951, 1566179; 306896, 1566171; 306871, 1566153.

(iii) **Note:** Map 1 of the critical habitat for Rota bridled white-eye follows:



* * * * *

Dated: September 7, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–18051 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 177

Wednesday, September 14, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Specialty Crop Committee's Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of listening session on specialty crops.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a listening session of the Specialty Crop Committee under the auspices of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The Specialty Crop Committee will hold a listening session from 9:30 a.m. to 4:45 p.m. on October 20, 2005, and from 8:30 a.m. to 11:45 a.m. on October 21, 2005.

The public may file written comments before or up to two weeks after the listening session with the contact person.

ADDRESSES: The listening session of the Specialty Crop Committee will take place at the Best Western Capitol Skyline Hotel, 10 I Street, SW., Washington, DC 20024–4299. You may submit comments by any of the following methods to the contact person identified in this notice: Mail/Hand-delivery: National Agricultural Research, Extension, Education, and Economics Advisory Board Office; U.S. Department of Agriculture; Room 344–A, Jamie L. Whitten Building; 1400 Independence Avenue, SW., Washington, DC 20250–2255; Fax: (202) 720–6199; E-mail: *dhanfman@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, (202) 720–3684.

SUPPLEMENTARY INFORMATION: The Specialty Crop Committee was established in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465. This Committee is a permanent subcommittee of the National Agricultural Research Extension, Education, and Economics Advisory Board (the Board). The Committee's charge is to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The congressional legislation defines ''specialty crops'' as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). In order to carry out its responsibilities effectively, the Committee is holding a listening session from October 20–21, 2005 in conjunction with the Advisory Board's biannual meeting scheduled from October 18–20, 2005 at the Best Western Capitol Skyline Hotel, 10 I Street, SW., Washington, DC. The listening session will elicit input from industry, national, and state representatives from organizations and institutions, local producers, and other individuals and groups interested in the specialty crop issues with which the Specialty Crop Committee is charged. The listening session will be organized into five specific panel sessions that correspond to one or more topics delineated in the Committee's charge by Congress. Panelists will provide a brief 10-minute statement that will address their respective panel topic(s) as well as suggest ways by which agricultural research, extension, and/or economics can enhance the specialty crop industry. Each panel session will be followed with questions by Committee members and brief public comments from the floor. Opportunities for general discussion from the floor will be held on Friday, October 21, 2005 from 10:30–11:30 a.m. Also, written comments by attendees and other individuals will be welcomed as additional public input before and up to two weeks following the listening session. All statements will become part of the official public record of the Board.

A copy of the draft agenda can be requested from the contact person cited above.

Done at Washington, DC this 8th day of September 2005.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 05–18218 Filed 9–13–05; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest, Beckwourth Ranger District; Plumas County, California Lake Davis Northern Pike Eradication Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Plumas National Forest, gives notice of the Agency's intent to prepare an Environmental Impact Statement (EIS) in cooperation with the California Department of Fish and Game (CDFG) issuing a joint Environmental Impact Report (EIR). The EIS will consider Federal and State actions associated with CDFG's proposal to eradicate northern pike, *Esox lucius,* from Lake Davis and its tributaries. Northern pike are restricted in California and it is unlawful to import, transport, or possess live animals. This proposed project is designed to help protect the fishery resources of the state by eradicating pike from Lake Davis and its upstream tributaries. CDFG has proposed to treat the reservoir and its tributaries with rotenone, at a concentration sufficient to eradicate northern pike and to restock the reservoir with trout. The associated actions are: (1) the Forest Service issuing CDFG a special use permit for access through, and use of National Forest lands adjacent to Lake Davis and its tributaries for implementing the proposed project. (2) a Forest order to close the entire area to the public during implementation of the proposed project and to close access to the lake bed as the lake level is lowered.

DATES: Comments concerning the scope of the analysis must be postmarked no later than October 31, 2005. The draft EIS is expected March 2006 and the final EIS is expected November 2006.

ADDRESSES: Send written comments to Julie Cunningham, P.O. Box 1858, Portola CA 96122. Email comments may

be submitted to: *northernpike@dfg.ca.gov.* Comments may also be submitted at the Web site: *http://www.dfg.ca.gov/northernpike.*

FOR FURTHER INFORMATION CONTACT: California Department of Fish and Game, Portola Field Office, P.O. Box 1858, Portola, CA 96122, (530) 832–4068. U.S. Forest Service, Plumas National Forest Supervisors Office, Angela Dillingham, 159 Lawrence Street, P.O. Box 11500, Quincy CA 95971, (530) 283–2050.

SUPPLEMENTARY INFORMATION: Lake Davis is located in Plumas County, California, at an elevation of 5,775 feet above sea level. Included in the project area are Lake Davis, all the tributaries in the watershed to Lake Davis and Big Grizzly Creek below Lake Davis. These all occur in the upper reaches of the Middle Fork Feather River watershed in the Sierra Nevada Mountains. Lake Davis is a State Water Project reservoir that was first impounded in 1966–68 by the construction of Grizzly Valley Dam on Big Grizzly Creek. Three main tributaries, Big Grizzly, Freeman and Cow Creeks, feed the reservoir. The total drainage area is about 44 square miles. Lake Davis has a surface area of 4,025 acres when full, a capacity of 84,371 acre-feet and an average depth of 21 feet. The deepest point of the reservoir is 108 feet, just upstream of Big Grizzly Dam. The reservoir is operated by the California Department of Water Resources (CDWR), and lies within the U.S. Forest Service, Plumas National Forest.

Lake Davis water is used for recreation, irrigation, and for the benefit of fish and wildlife. It supports a trout fishery managed by CDFG. Lake Davis has been developed as a source of domestic water for the City of Portola and the Grizzly Lake Resort Improvement District. The Plumas County water treatment plant, which treats Lake Davis water, was taken offline, as it did not meet regulatory standards, and remains offline pending improvements to the water treatment plant. Currently neither entity uses Lake Davis as a water supply. Nearby residences depend on ground water from private wells.

Pike were first discovered in Lake Davis in 1994. In 1997, a chemical treatment was conducted to remove pike from Lake Davis and its tributary streams. Pike were rediscovered in Lake Davis in May 1999, about eighteen months following what appeared to be a successful rotenone treatment of the reservoir. In 2000 CDFG and the Lake Davis Steering Committee developed a management plan to suppress the pike population, contain it within Lake Davis and to remove as many pike as possible from the reservoir (to date approximately 50,000). In September 2003 CDFG evaluated the previous 3½ years of pike removal, which can be viewed on the Web at *http://www.dfg.ca.gov/northenpike/summary_report.pdf.* Data indicated pike numbers continued to increase in spite of the concerted control efforts.

Purpose and Need for Action

Pike are a nonnative invasive fish species illegally introduced to California. Pike can seriously impact aquatic ecosystems by heavy predation on other fish species, where habitat conditions are favorable. Introduced pike have the potential to become the dominant fish species, often to the near total exclusion of native fish species. Portions of the Feather River, Sacramento River, and the Sacramento-San Joaquin Delta, as well as many aquatic environments in other California watersheds, match the preferred habitat of the pike in terms of temperature, aquatic vegetation, current speed and other features. The geographical extent of pike in California is thought to be limited to Lake Davis and its upstream tributary streams. Lake Davis flows into the Middle Fork Feather River, which flows into Lake Oroville and then into the Sacramento River and the Sacramento-San Joaquin Delta. Within the Sacramento-San Joaquin Delta system, a number of fish species have life history stages and habitat preferences, that make them vulnerable to pike predation. These include the state and federally listed out migrating juveniles of winter and spring run Chinook salmon, steelhead and delta smelt. Other species of concern are splittail, Sacramento perch and a variety of fish species including stocked trout.

Based upon current knowledge of the physical and biological processes that influence the spread and impact of pike on aquatic ecosystems, the pike population in Lake Davis appears poised to have a serious and widespread environmental impact on California's aquatic ecosystems. If the pike population is not eradicated, biological and physical processes or physical movement by humans will eventually result in the spread of the pike population to downstream locations. The risk of such a spread has steadily increased since 1999 as the pike population in Lake Davis has increased in numbers. Due to the pike containment in just the Lake Davis area, a window of opportunity exists to eliminate the species from the state.

Proposed Action

The EIS proposed action is to issue the required Forest Service Special Use Permit needed to carry out CDFG's proposed project. This would include a Forest Closure in the immediate area surrounding Lake Davis for public safety and to protect archaeological sites. The CDFG proposed project involves the draw down of Lake Davis to a volume of about 10,000–20,000 acre-feet. A liquid rotenone formulation would then be applied to eliminate pike. The remaining water held in Lake Davis and any ponded water, and waters flowing into Lake Davis, potentially from the headwaters of the three main tributaries, Big Grizzly, Freeman and Cow Creeks, to the reservoir, or wetland areas, ponds etc., adjacent to the flowing waters that are tributary to Lake Davis within its watershed would be treated with liquid rotenone at concentrations sufficient to eradicate the pike. It is anticipated at this time that the concentration of rotenone used would be 2 ppm.

Possible Alternatives

To date, the following alternatives have been preliminarily identified: (1) Proposed Action (preferred alternative); (2) No action alternative that would continue the current management plan; (3) Draw down the reservoir to minimum pool (approximate surface area of 25 acres, remaining volume about 90 acre feet) and use liquid rotenone; (4) Draw reservoir down to 48,000 acre-feet and eradicate with liquid rotenone; (5) Completely dewater reservoir and tributaries.

Lead and Cooperating Agencies

The Forest Service is the lead agency in the preparation of the EIS. CDFG is the lead agency for the preparation of the EIR. Both agencies are cooperating to prepare a joint EIR/EIS.

Responsible Official

Angela L. Dillingham, District Ranger, Beckwourth Ranger District, P.O. Box 7, Blairsden, CA 96103.

Nature of Decision To Be Made

Whether to issue a special use permit to CDFG for access through, and use of, National Forest lands to Lake Davis for implementing the proposed northern pike eradication project. Whether to implement a Forest Closure during implementation of the proposed project.

Scoping Process

Public scoping meetings are scheduled as follows:

September 26, 2005, there will be two sessions, 1–3 pm and 6:30–9 pm, at the Easterm Plumas Health Care Education

Center, 500 1st Avenue, Portola, California;

September 28, 2005, there will be two sessions, 1–3 pm and 6:30–9 pm, at the Radisson Hotel, 500 Leisure Lane, Sacramento, California.

Permits or Licenses Required

Approval from the following Agencies is required: U.S. Fish and Wildlife Service; U.S. Forest Service; Central Valley Regional Water Quality Control Board; California Department of Water Resources; California Department of Health Services; Northern Sierra Air Quality Management District; California Department of Pesticide Regulation; U.S. Army Corps of Engineers; Environmental Protection Agency.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS. Comments submitted during the scoping process should be in writing or e-mail, and should be specific to the proposed action. The comments should describe as clearly and completely as possible any point of dispute, debate or disagreement the commentater has with the proposed action. Once scoping letters are received, all potential issues will be identified to analyze in depth, and a reasonable range of alternatives will be developed to address those significant issues. Potential environmental effects of the proposed action as well as alternatives will be analyzed in the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement (as part of a joint EIR/EIS) will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period for the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: September 7, 2005.

Angela L. Dillingham,

District Ranger.

[FR Doc. 05–18204 Filed 9–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, October 13, 2005 and December 15, 2005. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held October 12, 2005 and December 15, 2005 at 6 p.m.

ADDRESSES: The meetings will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *ikolund@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 6, 2005.

Forrest Cole,

Forest Supervisor.

[FR Doc. 05–18207 Filed 9–13–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2006 Person Interview and Person Interview Reinterview Operations.

Form Number(s): None (automated instrument).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,017 hours.

Number of Respondents: 6,050.

Average Hours Per Response: 20 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct a Census Coverage Measurement (CCM) Operation in preparation for the 2010 Census. The CCM operation is to occur during the 2006 Census Test to evaluate new approaches that would produce improved measures of coverage error components for persons enumerated while making reductions in the number of people duplicated.

A coverage measurement program evaluates the coverage of the Decennial Census enumeration.

Coverage error includes:

—Components of Coverage Error—The two components of census coverage error are census omissions (missed persons) and erroneous inclusions. The latter includes duplicates, and persons who should not have been enumerated at a particular address (per our residence rules).

—Net Coverage Error—Reflects the difference between omissions and erroneous inclusions. A positive net error indicates an undercount, while a negative net error indicates an overcount.

The purpose of the 2006 CCM test is not to evaluate the coverage of the 2006 Census Test per se, but rather to test ways of improving previous coverage measurement methods. The CCM operation will evaluate improvements to CCM data collection methods and new approaches tested in 2006 to provide better CCM data and more accurate measures of coverage error for the 2010 Census.

The focus of the 2006 CCM Test is to test improved matching operations and data collection efforts designed to obtain more accurate information about where a person should have been enumerated according to our residence rules.

An additional objective for the 2006 CCM Test is to determine if we can conduct coverage measurement interviews before all census data collection is complete, and do so without contaminating the census and adversely affecting coverage measurement. This contamination would have a small effect on the census, but a more serious effect on coverage measurement. There are several operational and data quality advantages of conducting coverage measurement interviews as close to census day as possible, but we do not want to do this if it will seriously affect measurement of coverage error.

The 2006 CCM operations will use a sample of approximately 5,000 housing units in selected census tracts in Travis County, Texas; and 500 housing units on the Cheyenne River Reservation, off-reservation Trust Lands in South Dakota. The first operation of the CCM will be the PI operation. After data collected from the PI operation is matched to data collected by the short form enumeration in the CCM sample areas, certain cases will be sent for another CCM interview called the Person Followup Interview. A separate request for clearance will be submitted for that operation.

We also will conduct a quality control operation—PI Reinterview (PIRI). For this operation a random sample of approximately 500 housing units in selected census tracts in Travis County, Texas; and 50 housing units on the Cheyenne River Reservation, off-reservation Trust Lands in South Dakota will be selected. The purpose of the operation is to confirm that the PI enumerator conducted a PI with an actual household member or a valid proxy respondent. If the PIRI staff detects falsified information by the original enumerator, all cases worked by the original enumerator are reworked by reassigning the cases to a different PI enumerator.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: September 8, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18186 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: List of Gear by Fisheries and Fishery Management Council.

Form Number(s): None.

OMB Approval Number: 0648–0346.

Type of Request: Regular submission.

Burden Hours: 30.

Number of Respondents: 20.

Average Hours Per Response: 1 hour and 30 minutes.

Needs and Uses: Under provisions of section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. *et seq.*) as amended by the Sustainable Fisheries Act (Pub. L. 104–297), the Secretary of Commerce is required to publish a list of all fisheries under the authority of each Fishery Management Council and of all fishing gear to be used in such fisheries. Such a list has been published. Any person wishing to use gear not on the list, or engage in a fishery not on the list, must provide the appropriate Fishery Management Council (or in some cases the Secretary) with a 90 days advance written notice. If the Secretary takes no action to prohibit such a fishery or use of such gear, the person may proceed.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: September 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18187 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Application to Shuck Surf Clams/Ocean Quahogs at Sea.
Form Number(s): None.
OMB Approval Number: 0648–0240.
Type of Request: Regular submission.
Burden Hours: 51.
Number of Respondents: 202.
Average Hours Per Response: 5 minutes.
Needs and Uses: Federally permitted fishing vessels participating in the Atlantic surf clam or ocean quahog individual transferable quota (ITQ) fishery in the Northeast Region of the U.S. are subject to certain information collection requirements. The National Marine Fisheries Service uses the collected information to process requests for the transfer of surf clam or ocean quahog quota shares or authorization to shuck surf clams or ocean quahogs at sea.
Affected Public: Business or other for-profit organizations; individuals or households.
Frequency: As requested by public.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: September 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18188 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: U.S. Fishermen Fishing in Russian Waters.
Form Number(s): None.
OMB Approval Number: 0648–0228.
Type of Request: Regular submission.
Burden Hours: 1.
Number of Respondents: 1.
Average Hours Per Response: 1 hour.
Needs and Uses: U.S. fishermen who wish to fish in the Russian Federation Economic Zone may apply for a Russian permit by submitting application information to the National Marine Fisheries Service for transmittal to Russian authorities. The permit holders must provide information regarding their permits and must report when entering or leaving the U.S. Exclusive Economic Zone.
Affected Public: Business or other for-profit organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: September 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18189 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 050714187–5187–01]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Wholesale Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales; e-commerce sales; and year-end inventories, purchases, commissions, and operating expenses. These data are important inputs to the Bureau of Economic Analysis's (BEA) preparation of National Income and Products Accounts and its annual input-output tables.

FOR FURTHER INFORMATION CONTACT: John R. Trimble, Chief, Annual Wholesale and Special Projects Branch, Service Sector Statistics Division, on (301) 763–7223 or by e-mail at *John.R.Trimble@census.gov.*

SUPPLEMENTARY INFORMATION: The Annual Wholesale Trade Survey is a continuation of similar wholesale trade surveys conducted each year since 1978 for distributors, and since 2003, for manufacturers' sales branches and offices (MSBOs). This survey provides, on a comparable classification basis, annual sales, e-commerce sales, purchases, commissions and operating expenses, and year-end inventories for 2004. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 2005 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys that are necessary to furnish current data on the subject covered by the censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. This survey will provide continuing and timely national statistics data on wholesale trade for the period between economic censuses. For 2005, the survey will, as it has in the past for distributors and MSBOs, operate as a separate sample of wholesale companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. The data collected in this survey will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In

accordance with the PRA, Title 44, United States Code, Chapter 35, OMB approved this survey under OMB control number 0607–0195. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: September 9, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 05–18247 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, Economics and Statistics Administration.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409, Public Law 96–523, Public Law 97–375 and Public Law 105–153), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Director's report/update; 2. Communication of BEA data methodologies and concepts; 3. NAICS, NAPCS and time series continuity; 4. International data needs; 5. Medical care spending.

DATES: Friday, November 4, 2005, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis, 1441 L Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James J. Murphy, Public Affairs Specialist, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–2787.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact James Murphy of BEA at (202) 606–2787 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to James Murphy at (202) 606–2787.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's regional economic accounts and proposed revisions to the International System of National Accounts. This will be the Committee's ninth meeting.

Dated: September 7, 2005.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 05–18248 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on automotive replacement glass (''ARG'') windshields from the People's Republic of China (''PRC'') on May 9, 2005. *See Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review* 70 FR 24373 (May 9, 2005) (''*Preliminary Results*''). The period of review (''POR'') is April 1, 2003, through March 31, 2004. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Will Dickerson or Jon Freed, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 and (202) 482–3818, respectively.

Background

On April 4, 2002, the Department published in the **Federal Register** the antidumping duty order on ARG windshields from the PRC. *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). On April 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period April 1, 2003, through March 31, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 69 FR 17129 (April 1, 2004). On April 21, 2004, Pilkington North America, Inc. (''PNA''), an importer of subject merchandise during the POR, requested an administrative review of Changchun Pilkington Safety Glass Company Limited and Wuhan Yaohua Pilkington Safety Glass Company Limited (collectively ''the Pilkington JVs''), producers from which it imported the subject merchandise (with PNA, collectively ''Pilkington''). On April 24, 2004, Dongguan Kongwan Automobile Glass, Ltd. (''Dongguan Kongwan'') and Peaceful City, Ltd. (''Peaceful City'') requested an administrative review of their sales to the United States during the POR. On April 26, 2004, Fuyao Glass Industry Group Company, Ltd. (''Fuyao'') requested an administrative review of its sales to the United States during the POR. On April 29, 2004, Shenzhen CSG Automotive Glass Co., Ltd. (''CSG'') requested an administrative review of its sales to the United States during the POR.[1] No other interested parties submitted requests for review. On May 27, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of ARG windshields from the PRC for the period April 1, 2003, through March 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in*

[1] CSG also listed the following variations of the company names that may have been used to represent it during the POR: Shenzhen CSG Automotive Glass Co., Ltd.; Shenzhen Benxun AutoGlass Co., Ltd.; Shenzhen Benxun Automotive Glass Co., Ltd.; Shenzhen Benxun Automotive Co., Ltd.; Shenzhen Benxun AutoGlass Co., Ltd., d/b/a Shenzhen CSG Automotive Glass Co., Ltd.; Shenzhen CSG Automotive Glass Co., Ltd. (Shenzhen Benxun Automotive Co., Ltd.); and Shenzhen CSG Automotive Glass Co., Ltd. (Shenzhen Benxun Automotive Glass Co., Ltd.). Subsequent to CSG's request for an administrative review, the Department determined that CSG is a successor-in-interest to Shenzhen Benxun Automotive Glass Co., Ltd., which received a separate rate in the investigation of this proceeding. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Automotive Replacement Glass Windshields From the People's Republic of China*, 69 FR 43388 (July 20, 2004).

Part, 69 FR 30282 (May 27, 2004) (''*Initiation Notice*'').

On October 12, 2004, the Department published a notice of partial rescission, which rescinded the administrative review with regard to the following companies: Dongguan Kongwan, Fuyao, and Peaceful City. *See Certain Automotive Replacement Glass Windshields From the People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review*, 69 FR 60612 (October 12, 2004). On December 3, 2004, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review from December 31, 2004, to March 31, 2005. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 70224 (December 3, 2004). Additionally, on March 22, 2005, the Department published a notice in the **Federal Register** further extending the time limit for the preliminary results of review to May 2, 2005. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 70 FR 14445 (March 22, 2005).The Department published the preliminary results on May 9, 2005. *See Preliminary Results*, 70 FR at 24373.

We invited parties to comment on our preliminary results. *See Preliminary Results*, 70 FR at 24381. On June 8, 2005, the Department received a case brief from CSG. We did not receive a case brief from PNA or any other interested party. In addition, we did not receive any rebuttal comments. On August 18, 2005, we issued a memorandum to all interested parties requesting comments regarding a change in the Department's calculated regression-based wage rate methodology. *See Memorandum from Will Dickerson to the File: Automotive Replacement Glass Windshields from the People's Republic of China—New Non-Market Economy Wage Rates* (August 18, 2005). No parties provided comments. We have conducted this administrative review in accordance with Section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Scope of Order

The products covered by this order are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this order are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of the order are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the Issues and Decision Memorandum, dated September 6, 2005, (''Decision Memo'') which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Decision Memo is attached to this notice as an appendix. The Decision Memo is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is accessible on the Web at *http://www.ia.ita.doc.gov/*. The paper copy and electronic version of the memorandum are identical in content.

Partial Facts—Available

In the preliminary results, the Department used facts otherwise available in conducting its analysis of certain U.S. sales which were not reported by CSG. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide that the Department shall use facts available when an interested party withholds information that has been requested by the Department or when an interested party fails to provide the information requested in a timely manner and in the form requested. During verification, the Department discovered that CSG had failed to provide information regarding certain U.S. sales of subject merchandise by the deadline for submitting such information. *See Preliminary Results*, 70 FR at 24377. Consequently, the Department lacked information necessary to conduct a complete and accurate analysis of these U.S. sales of subject merchandise and determined to use facts otherwise available for the U.S. sales which were not reported by CSG. *See* sections 776(a)(1) and 776(a)(2)(B) of the Act.

Section 776(b) of the Act provides that the Department may use adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. In applying facts available to the unreported sales, the Department determined that adverse inferences were warranted because CSG failed to cooperate by not acting to the best of its ability to comply with the Department's requests to report all U.S. sales in a timely manner. CSG had numerous opportunities to present complete and accurate information regarding its U.S. sales but failed to do so. *See Preliminary Results*, 70 FR at 24377. Because the administrative record was incomplete with regard to these unreported U.S. sales, the Department applied the PRC-wide rate from the petition as adverse facts available (''AFA''), in accordance with Section 776(b) of the Act. *See Preliminary Results*, 70 FR at 24377. There have been no arguments submitted to cause us to reconsider our decision in the preliminary results in this respect. Therefore, we have determined that the application of partial facts available continues to be appropriate for certain U.S. sales which were not reported by CSG.

Corroboration of Adverse Facts Available

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is defined in the Statement of Administrative Action (''SAA'') as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See*

SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

In the preliminary results, we corroborated the petition rate that was applied as AFA to CSG's unreported sales. *See Preliminary Results*, 70 FR at 24378; *see also Memorandum from Will Dickerson to Robert Bolling: Corroboration of the PRC-Wide Adverse Facts-Available Rate*, dated May 2, 2005 (''*Second Review Preliminary Corroboration Memo*''). The Department explained that the reliability of the petition rate was determined in the investigation and that no information in the current review was presented that challenges the reliability of this information. *See Second Review Preliminary Corroboration Memo* at 2. Since the preliminary results, no parties have placed arguments on the record to cause us to reconsider the reliability of the petition rate. Thus, the Department continues to find that the information is reliable.

In the preliminary results, the Department found the petition rate to be relevant because the record of this administrative review contained margins within the range of the petition margin, although we stated that we would reexamine its relevancy by considering all margins on the record at the time of the final results. *See Preliminary Results*, 70 FR at 24378. In these final results, the Department compared the final margin calculations in this administrative review with the rate of 124.5 percent from the original petition to assess the relevancy of the partial AFA rate it has chosen. We find that the highest dumping margins for both CSG and PNA exceed the petition rate of 124.5 percent. *See Memorandum from Will Dickerson to Robert Bolling: Corroboration of the PRC-Wide Adverse Facts—Available Rate,* dated September 6, 2005, at Attachment 1. Therefore, the PRC-wide rate continues to be within the range of the highest margins we have determined in this administrative review. Since the record of this administrative review contains margins within the range of the petition margin, we determine that the rate from the petition continues to be relevant for use in this administrative review. Further, the rate used is currently applicable to all exporters subject to the PRC-wide rate.

As the petition rate is both reliable and relevant, we determine that it has probative value. As a result, the Department determines that the petition rate is corroborated, to the extent practicable, for the purposes of this administrative review and may reasonably be applied to CSG as a partial AFA rate. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the rate of 124.5 percent) is corroborated in accordance with the requirement under section 776(c) of the Act (*i.e.*, has probative value), and we have assigned this rate to CSG's unreported sales.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for CSG. *See* Decision Memo at 6. In the preliminary results, the Department inadvertently made a currency conversion error with respect to certain unreported sales of CSG. For the final results, the Department corrected the currency conversion error.

Additionally, for these final results, the Department has modified its regression-based PRC wage rate. The specific calculation changes can be found in *CSG Final Analysis Memo* and *Final Results of Review of the Order on Automotive Replacement Glass Windshields from the People's Republic of China: Pilkington North America Program Analysis for the Final Results of Review Memorandum from Will Dickerson, Case Analyst, through Robert Bolling, Program Manager, Office VIII to the File*, dated September 6, 2005 (''*PNA Final Analysis Memo*'').

Final Results of Review

We determine that the following percentage margins exist on exports of ARG windshields from the PRC for the period April 1, 2003, through March 31, 2004:

AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS FROM THE PRC

Producer/Manufacturer/ Exporter	Weighted-average margin percent)
CSG	0.93
Pilkington	0.91

Assessment Rates

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates for merchandise subject to this review. For CSG, we divided the total dumping margins of its reviewed sales by the total entered value of its reviewed sales for each applicable importer to calculate *ad-valorem* assessment rates. Because Pilkington did not report entered value, we divided the total dumping margins of its reviewed sales by the total quantity (measured in square meters) of subject merchandise sold to each applicable importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each importer's entries under the relevant order during the POR.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates. For CSG, we aggregated the dumping margins calculated for all U.S. sales to each importer and divided this amount by the entered value of the sales to each importer. For further details see *CSG Final Analysis Memo*. For Pilkington, we divided the total dumping margins for each importer by a constructed entered value of the sales to each importer, as Pilkington did not report entered value. For further details *see PNA Final Analysis Memo*. Where an importer-specific *ad valorem* rate is *de minimis*, we will order CBP to liquidate appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of ARG windshields from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by Section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except that the Department shall require no deposit of estimated antidumping duties for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*; (2) for previously reviewed or investigated companies not listed above

that have separate rate, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 124.5 percent, the current PRC-wide rate; and (4) the cash deposit rate for all non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in the Decision Memorandum

Shenzhen CSG's Comments

Comment 1: Currency Used to Value Certain Unreported Sales of CSG

Comment 2: Treatment of the By-Product Offset in Normal Value

[FR Doc. 05–18175 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Rescission of antidumping duty new shipper review.

SUMMARY: On June 30, 2005, the Department of Commerce (''the Department'') initiated a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC'') covering the period November 1, 2004, through April 30, 2005. *See Fresh Garlic from the People's Republic of China: Notice of Initiation of New Shipper Antidumping Duty Review,* 70 FR 39733 (July 11, 2005) (''*Initiation Notice*''). This new shipper review covered three exporters, Shandong Chenshun Farm Produce Trading Company, Ltd., Shenzhen Fanhui Import and Export Co., Ltd., and Xi'an XiongLi Foodstuff Co., Ltd. (''Xian XiongLi''). For the reasons discussed below, pursuant to 19 CFR 351.214(f)(1), we are rescinding the review of Xian XiongLi.

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Ryan Douglas or Brian Ledgerwood at AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1277 and (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2005, the Department received a timely request for a new shipper review of the antidumping duty order on fresh garlic from the PRC from Xian XiongLi, an exporter of subject merchandise sold to the United States. On June 30, 2005, the Department initiated this new shipper review covering the period November 1, 2004, through April 30, 2005. On August 9, 2005, the Department received a timely request from Xian XiongLi to withdraw its request for this review. *See Letter from Xian XiongLi Foodstuff Co., Ltd. to the Department, August 9, 2005.*

Scope of the Antidumping Duty Order

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

In order to be excluded from antidumping duties, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use, or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed, must be accompanied by declarations to the U.S. Customs and Border Protection (''CBP'') to that effect.

Rescission of New Shipper Review

Pursuant to 19 CFR 351.214(f)(1), the Department will rescind a new shipper review if a party that requested a review withdraws its request not later than 60 days after the date of publication of the notice of initiation of the requested review. Xian XiongLi; withdrew its request for a new shipper review on August 09, 2005, before the expiration of the 60-day deadline. No other party requested a new shipper review of Xian XiongLi, therefore, we are rescinding the new shipper review of the antidumping duty order on fresh garlic from the PRC with respect to Xian XiongLi in accordance with 19 CFR 351.214(f)(1).

Cash Deposits

The Department will issue appropriate cash deposit instructions to CBP for shipments from Xian XiongLi of fresh garlic from the PRC entered, or withdrawn from warehouse, for

consumption in the United States on or after the publication of this notice of rescission of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice, for all shipments of the subject merchandise exported by Xian XiongLi and entered, or withdrawn from warehouse, for consumption, the cash deposit rate will be the PRC-wide rate, which is 376.67 percent.

Notification to Parties Subject to Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(f)(3).

Dated: September 7, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5020 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2005, the Department of Commerce (the Department) published the preliminary results of its second administrative review of the antidumping duty order on low enriched uranium (LEU) from France. The review covers one producer of the subject merchandise. The period of review (POR) is February 1, 2003, through January 31, 2004. Based on our analysis of the comments received, we have made changes to the preliminary results. For the final dumping margins see the ''Final Results of Review'' section below.

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Elfi Blum at (202) 482–2371 or (202) 482–0197, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2005, the Department published in the **Federal Register** the preliminary results of the second administrative review of the antidumping duty order on LEU from France. *See Low Enriched Uranium From France: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 10957 (March 7, 2005), (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On June 30, 2005, we received case briefs from the sole respondent, Eurodif S.A., Compagnie Générale Des Matières Nucléaires, S.A. and COGEMA, Inc. (collectively, Eurodif/COGEMA), and the petitioner, the United States Enrichment Corporation and USEC Inc. (collectively, USEC). Eurodif/COGEMA and USEC submitted their rebuttal briefs on July 8, 2005.

On June 15–17, 2005, the Department conducted verification of the information submitted by respondent on behalf of Électricité de France (EdF), an affiliated electricity supplier, and of the research and development (R&D) activities conducted by the Commissariat à l'Energie Atomique (CEA). Eurodif/COGEMA and USEC submitted comments to the verification report on July 22, 2005, and July 25, 2005, respectively. Eurodif/COGEMA submitted its rebuttal comments on July 28, 2005 (amended on August 2, 2005), and USEC submitted its rebuttal comments on July 27, 2005.

A hearing was held on August 4, 2005. At petitioner's request, a portion of the hearing was conducted on a closed basis, for purposes of discussing business proprietary information.

On August 25, 2005, the Department placed on the record of this review new information pertaining to USEC's R&D activities into centrifuge technology and invited the parties to comment. Eurodif/COGEMA and the petitioner filed their comments on August 29, 2005, and their rebuttals on August 31, 2005.

Scope of the Order

The product covered by this order is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this order. Specifically, this order does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this order. For purposes of this order, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this order.

Also excluded from this order is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end-user.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), on June 15–17, 2005 we verified the information submitted by Eurodif/COGEMA regarding its POR purchases of electricity from EdF, and R&D expenses incurred during the POR by the CEA and attributable to Eurodif/COGEMA. We used standard

verification procedures, including on-site examination of relevant accounting and production records and original source documents provided by Eurodif/COGEMA. Our verification results are outlined in the *Memorandum to Neal M. Halper, Director, From Ernest Z. Gziryan, Senior Accountant; Ref.: Administrative Review of Low Enriched Uranium from France; Subj.: Verification Report on the Cost of Production Data Submitted by Electricité de France* (July 11, 2005) (*EdF Verification Report*), and *Memorandum to The File Through Dana Mermelstein From Elfi Blum: Verification of research and development expenses at the French Atomic Energy Commission (CEA)* (July 11, 2005) (*CEA Verification Report*). Public versions of both reports are on file in the Import Administration Central Records Unit (CRU), in room B–099 of the Department of Commerce.

Analysis of Comments Received

The issues raised in all case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration* (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in the CRU, and can be accessed directly on the Web at *http://www.ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made adjustments to the methodology used in calculating the final dumping margin. The adjustments are discussed in detail in the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period of February 1, 2003, through January 31, 2004:

Manufacturer/Exporter	Margin (percent)
Eurodif/COGEMA	12.62

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will not issue liquidation instructions for any entries of Eurodif merchandise until such time as the July 1, 2002, injunction issued by the Court of International Trade, is lifted.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of LEU from France entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 19.95 percent, the ''All Others'' rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Reimbursement

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memorandum

Comment 1: Goods Versus Services
Comment 2: Eurodif's Cost of Purchases of Electricity From the Affiliated Supplier
Comment 3: Established Market Price for Electricity
Comment 4: Excluded Costs in EdF's Cost of Production
Comment 5: Cogema's R&D Expenses
Comment 6: CEA's R&D for Centrifuge Enrichment Technology
Comment 7: Use of USEC's Financial Statements
Comment 8: Goodwill Expenses in Constructed Value (CV) Profit
Comment 9: Inter-Company Sales as Part of Sales Revenues in CV Profit
Comment 10: Offset to COGEMA's Interest Expense for Income on Short-Term Investment
Comment 11: Date of Sale for Certain Deliveries
Comment 12: Cost of Uranium in the Calculation of CEP and CV
Comment 13: Indirect Selling Expense Rate
Comment 14: Attribution of Indirect Selling Expenses
Comment 15: Ministerial Error in the CV Calculation for G&A, Interest Rate, and CV Profit

[FR Doc. E5–5019 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2005, the Department of Commerce (''the Department'') published *Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review*, 70 FR 10965 (March 7, 2005) (''*Preliminary Results*''). This review covers twenty-two exporters or producer/exporters, seven of these are active respondents.[1] The active respondents are Gerber Food (Yunnan) Co., Ltd., (''Gerber''), Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian''), Shandong Jiufa Edible Fungus Corporation, Ltd. (''Jiufa''), Xiamen International Trade & Industrial Co., Ltd. (''XITIC''), China Processed Food Import & Export Company (''COFCO''), Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh''), and Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin'').

We invited interested parties to comment on our *Preliminary Results*. Based on our analysis of the record, including factual information obtained since the *Preliminary Results*, we have made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of the Review'' section below.

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Musser or John Conniff AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; at (202) 482–1777 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2005, the Department published the *Preliminary Results*. The period of review (''POR'') is February 1, 2003 through January 31, 2004.

Since the Preliminary Results the following events have occurred:

On March 8, 2005, the Department issued a supplemental questionnaire to COFCO. On March 15, 2005, the Department informed Green Fresh that its March 2, 2005, submission was being returned because it consisted of untimely filed information. On March 17, 2005, the Department informed COFCO that it would not accept new information that had been offered for clarification of a previous submission. On March 14, 2005, Jiufa requested a hearing. On March 22, 2005, the Coalition for Fair Preserved Mushroom Trade (collectively, ''petitioners'') requested a hearing. On April 4, 2005, COFCO and Guangxi Yulin requested a hearing.[2]

The Department conducted verifications of Jiufa on March 14 through March 18, 2005; XITIC on March 21 through March 25, 2005; Gerber on March 29 through April 1, 2005, and Green Fresh on April 5 through April 8, 2005. On March 29, 2005, COFCO submitted its response to the Department's fourth supplemental questionnaire. On May 17, 2005, the Department issued a verification reports for Jiufa and XITIC. On June 7 and 8, 2005, the Department issued verification reports for Gerber and Green Fresh, respectively.

On June 3, 2005, the Department issued a supplemental questionnaire to Guangxi Yulin. On June 24, 2005, Guangxi Yulin informed the Department that it would not respond to the supplemental questionnaire. In a letter dated June 30, 2005, Guangxi Yulin stated that it was withdrawing from the review.

On July 6, 2005, we received case briefs from respondents COFCO, Green Fresh, XITIC, Guangxi Hengxian, and Jiufa. We received rebuttal briefs from petitioners, COFCO, and Jiufa on July 13, 2005.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to Guangxi Yizhou, Minhui, Nanning Runchao, Primera Harvest,

[1] The following fifteen companies were part of this review, however did not participate: Dingyuan Import & Export Corporation (''Dingyuan''); Guangxi Yizhou Dongfang Cannery (''Guangxi Yizhou''); Nanning Runchao Industrial Trade Co., Ltd. (''Nanning Runchao''); Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest''); Raoping Xingyu (''Raoping Xingyu''), and its affiliate Raoping Yucun Canned (''Raoping Yucun''); Shanghai Superlucky Import & Export Company, Ltd. (''Superlucky''); Shantou Hongda Industrial General Corporation, (''Shantou Hongda''); Shenxian Dongxing Foods Co., Ltd. (''Shenxian Dongxing''); Shenzhen Qunxingyuan Trading Co., Ltd. (''Shenzhen Qunxingyuan''); Tak Fat Trading Co. (''Tak Fat''); Mei Wei Food Industry Co., Ltd. (''Mei Wei''); Xiamen Zhongjia Imp. & Exp. Co., Ltd. (''Zhongjia''); Zhangzhou Hongning Canned Food Factory (''Zhangzhou Hongning''); Zhangzhou Jingxiang Foods Co., Ltd. (''Zhangzhou Jingxiang''); and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui'').

[2] We note that all of the above parties withdrew their requests for a hearing; thus, no hearing was held in this case.

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States*, 39C F.3d 1378 (Fed. Cir. 2005).

Raoping Xingyu and its affiliate Raoping Yucun, Shenxian Dongxing, Shenzhen Qunxingyuan, Superlucky, Tak Fat and its affiliate Mei Wei, and Zhongjia because the shipment data that was examined by the Department did not show U.S. entries of subject merchandise during the POR for these companies. *See Preliminary Results*. The Department has received no comments on this issue. Therefore, the Department is rescinding this administrative review with respect to each of these companies.

Separate Rates

Gerber, Green Fresh, Guangxi Yulin, Jiufa, Guangxi Hengxian, COFCO, and XITIC have requested separate, company-specific antidumping duty rates. In our *Preliminary Results*, we found that Gerber was wholly owned by entities located outside of the PRC, and that application of the separate rates analysis was inappropriate. We further found in the *Preliminary Results* that Green Fresh, Guangxi Yulin, Jiufa, Guangxi Hengxian, COFCO, and XITIC had met the criteria for the application of a separate antidumping duty rate. See *Preliminary Results*. We have not received any information since the *Preliminary Results* with respect to Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, XITIC or COFCO that would warrant reconsideration of our separate-rates results. Therefore, we have assigned individual dumping margins to Green Fresh, Guangxi Hengxian, Guangxi Yulin, Jiufa, XITIC, and COFCO.

In the *Preliminary Results* we also found that Dingyuan and Zhangzhou Jingxiang did not respond in a complete and timely manner to the Department's requests for information, and that Shantou Hongda withdrew from the review after an initial response; hence these companies do not qualify for a separate rate. The Department did not receive comments on this issue prior to these final results. *See also* ''The PRC-Wide Rate and Application of Facts Otherwise Available'' section below.

On March 29, 2005, the Department commenced a verification of the facts submitted by Gerber in its responses to the Department's questionnaires. On April 1, 2005, the fourth day of verification, Gerber withdrew from verification, reclaiming its verification exhibits, and indicating acceptance that withdrawal would result in total AFA.[4] The Department was unable to complete the verification of the information submitted by Gerber, including verification of information pertaining to Gerber's eligibility for a separate rate. Therefore, as a result, the Department finds that Gerber does not qualify for a separate rate.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this review are addressed in the *Issues and Decision Memorandum*, dated September 6, 2005, which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Decision Memo is attached to this notice as an Appendix. The Decision Memorandum is a public document which is on file in the Central Records Unit (''CRU''), room B–099 in the main Department building, and can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, the Department has made changes to the margin calculation for Guangxi Hengxian, Jiufa, XITIC, COFCO, and Green Fresh. Based on information submitted since the *Preliminary Results*, some surrogate values have changed and some new values have been added. The surrogate value for soil, salt, labels, gypsum, water, cans and lids, and labor have changed. *See Issues and Decision Memorandum* at comment 1 and 2. The surrogate values for caustic soda, sodium hypochlorite, dope, banding, banding clips, ink, borax, epoxy, amylum, amyl acetate, and staples have been introduced. *See Issues and Decision Memorandum* at comment 4.

For the final results, the calculation of surrogate financial ratios for factory overhead and selling, general and administrative expenses (''SG&A'') have been changed to better reflect 2003 and 2004 information, and to more closely reflect past Department policy. The Department corrected the amount of ''Consumption of Raw Material'' when using Agro Dutch's financial Profit and Loss Statement for calculation of SG&A. The Department also added ''job work'' expenses to labor to calculate a total labor cost, consistent with prior practice. The Department excluded discounts and rebates, also consistent with past practice. The Department corrected a clerical error in calculating depreciation, an element of factory overhead. *See Issues and Decision Memorandum* at comment 2.

For Guangxi Hengxian, we have made the following changes. First, as Guangxi Hengxian self-produces a significant portion of its cans, we have valued the factors of production for the cans that it produces and calculated a weighted average between the value of the can based on the can-making factors and the surrogate value of the finished can that would reflect Guangxi Hengxian's ratio of finished can purchases to its can production[5] Second, in order to capture the most accurate reflection of growing FOPs, the Department has only considered the FOPs in the first growing period in its entirety and has not considered any portion of the FOPs in the second growing period.

With regard to Jiufa, we have determined that Jiufa and Yantai Muping Packing Materials Co., Ltd. (''Jiufa Packing'') are part of the same group and have used the factors of production reported for Jiufa Packing.[6] With regard to COFCO, we determine that COFCO has provided enough information to establish a reasonable link between the free jars received and the jarred merchandise sold to the U.S. customer. Therefore, we have adjusted the amount of the U.S. price for the expenditures paid by the U.S. customer for the jars.

The PRC-Wide Rate and Application of Facts Otherwise Available

The PRC-wide rate will apply to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. *See* ''Separate Rates'' section above.

Adverse Facts Available

Section 776(a) of the Tariff Act of 1930, as amended, (''the Act'') provides that, when (1) necessary information is not available on the record, the Department may use the facts otherwise available to make a results. Section 776(a)(2) of the Act provides that, if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782;

[4] *See Memorandum Discussing the On Site Meetings to Verify the Response of Gerber Foods (Yunnan) Co., Ltd. (''Gerber'') in the Fifth Antidumping Duty Review of Certain Preserved Mushrooms from the People's Republic of China (''PRC'')* dated June 13, 2005, from Amber Musser, International Trade Compliance Analyst, through James C. Doyle, Director, Office 9, to the File, (''Gerber Memo'') for a discussion of the events that occurred at verification prior to Gerber's withdrawal.

[5] We note that we have introduced additional surrogate values for these factors where needed.

[6] *See* Jiufa comment 9.

(C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable results under this title. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) further states that, if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the results but does not meet all the applicable requirements established by the administering authority if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable results, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information, and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent if it determines that a party has failed to cooperate to the best of its ability. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action* (''SAA'') accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid insufficient attention to its statutory duties. *See Tung Mung Dev. Co.* v. *United States*, 223 F. Supp. 2d 1336, 1342 (August 6, 2002). Furthermore, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins. *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997). The focus of 776(b) of the Act is respondent's failure to cooperate to the best of its ability, rather than its failure to provide requested information. *See Nippon Steel Corp.* v. *United States,* 337 F. 3d 1373, 1382 (Fed. Cir. 2003). An adverse inference may include reliance on information derived from the petition, the final results in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

Gerber

Section 776(a) of the Act provides that the Department may make a facts available (''FA'') determination if a party withholds information requested by the Department, significantly impedes a proceeding, and/or provides unverifiable information in a proceeding. Through its withdrawal from verification, Gerber withheld requested information from the Department, impeded this proceeding, and precluded the Department from verifying information placed on the record in this case. Consistent with Section 776(a) of the Act, the Department has determined to apply total facts available to Gerber for the final results. The application of total facts available is warranted in this case because Gerber's withdrawal from verification made it impossible for the Department to verify all of the information on the record.

The Department further finds that by withdrawing from verification, Gerber has failed to cooperate to the best of its ability in this proceeding. Therefore, pursuant to section 776(b) of the Act, we find it appropriate to use an inference that is adverse to the interests of Gerber in selecting from among the facts otherwise available with respect to its request for a separate rate. By doing so, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review. Furthermore, as noted above, because we were unable to verify Gerber's separate rates information, as adverse facts available (''AFA''), Gerber's request for a separate rate will be denied. Accordingly, as AFA, we are applying the PRC-wide rate to Gerber. *See* below for a discussion of the probative value of the 198.63 percent rate.

PRC-Wide Rate (Dingyuan, Shantou Hongda, Zhangzhou Jingxiang)

In the *Preliminary Results*, we determined that Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang would be subject to the PRC-wide rate. Specifically, Dingyuan and Zhangzhou Jingxiang did not respond to the Department's questionnaires, and Shantou Hongda withdrew from the review after filing an initial questionnaire response. We received no comments regarding our preliminary finding to deny the companies a separate rate. Accordingly, as AFA, we have continued to apply the PRC-wide rate of 198.63 percent to Dingyuan, Shantou Hongda, and Zhangzhou Jingxiang. *See* below for a discussion of the probative value of this figure.

Guangxi Yulin

At verification, the Department discovered Guangxi Yulin's name in Gerber's records.[7] On June 3, 2005, the Department issued a supplemental questionnaire to Guangxi Yulin allowing it a chance to clarify and explain its relationship with Gerber. Guangxi Yulin was granted an extension to respond to this supplemental, but on June 30, 2005, its counsel informed the Department that it would not participate any further in this review or the ongoing sixth review of this case. Guangxi Yulin acknowledged that it risked a Department finding that it failed to cooperate to the best of its ability under section 776(b) of the Act.

Guangxi Yulin's refusal to respond to the Department's final supplemental questionnaire leaves the record incomplete. The Department finds that due to the circumstances surrounding the issuance of the supplemental questionnaire, the information was critical and necessary to the Department's review of Guangxi Yulin's production and sales during the POR. Therefore, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (B) of the Act, the Department finds the lack of this critical information on the record warrants the application of total facts available to Guangxi Yulin's calculations.

Furthermore, pursuant to section 776(b) of the Act, the Department has determined that the application of an

[7] *See Memorandum Discussing the On Site Meetings to Verify the Response of Gerber Foods (Yunnan) Co., Ltd. in the Fifth Antidumping Duty Review of Certain Preserved Mushrooms from the People's Republic of China (''PRC'')* dated June 13, 2005, from Amber Musser, International Trade Compliance Analyst, through James C. Doyle, Director, Office 9, to the File.

adverse inference is warranted. Guangxi Yulin refused to respond to the Department's final supplemental questionnaire which related to information covering the entire POR. Therefore, the Department finds that Guangxi Yulin failed to cooperate to the best of its ability.

As AFA, we have applied the PRC-wide rate of 198.63 percent to Guangxi Yulin. *See* below for a discussion of the probative value of the 198.63 percent rate.

Corroboration

In accordance with the Department's practice, we have assigned to the PRC-wide entity (including Dingyuan, Shantou Hongda, Zhangzhou Jingxiang, and Gerber) and Guangxi Yulin the rate of 198.63 percent as AFA. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse '' as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Results of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). Pursuant to section 776(c) of the Act, this rate is the highest dumping margin from any segment of this proceeding and was established in the less-than-fair-value investigation based on information contained in the petition, and corroborated in the final results of the first administrative review. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998); *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review*, 65 FR 66703 (November 7, 2000); and reinforced in *Certain Preserved Mushrooms from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 66 FR 31204 (June 11, 2001). For the reasons stated in the *Preliminary Results*, the Department continues to find this rate to be both reliable and relevant, and, therefore, to have probative value in accordance with the *Statement of Administrative Action*, H.R. Doc. 103–316 (''SAA''). *See* SAA at 870, *see also Preliminary Results* at 70 FR 10965. The Department received no comments on the Department's preliminary analysis of this rate for purposes of these final results. Therefore, the Department determines that the rate of 198.63 is still reliable, relevant, and, has probative value within the meaning of section 776(c) of the Act.

Final Results of Review

We determine that the following antidumping duty margins exist: [8]

Exporter	Percent
China Processed Food Import & Export Company	1.50
Green Fresh Foods (Zhangzhou) Co., Ltd.	167.72
Guangxi Hengxian Pro-Light Foods (Zhangzhou) Co., Ltd.	22.27
Shandong Jiufa Edible Fungus Corporation Ltd.	3.97
Xiamen International Trade & Industrial Co., Ltd.	0.24 (*de minimis*)
Guangxi Yulin Oriental Food Co.; Ltd.	198.63
PRC-Wide Rate	198.63

For details on the calculation of the antidumping duty weighted-average margin for each company, *see* the respective company's *Analysis Memorandum for the Final Results of the Fifth Administrative Review of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China*, dated September 6, 2005, on file in the CRU.

Assessment of Antidumping Duties

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.[9] For assessment purposes, where possible, we calculated importer-specific assessment rates for *Certain Preserved Mushrooms* from the PRC on a per-unit basis.[10] Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. In this and future reviews, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

For this and all subsequent review segments, we will establish and collect a per-kilogram cash deposit amount which will be equivalent to the company-specific dumping margin published in each review. The following cash-deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(c) of the Act: (1) For subject merchandise exported by COFCO, Green Fresh, Guangxi Hengxian, Jiufa, Guangxi Yulin, and XITIC, we will establish a cash deposit rate which will be equivalent to the company-specific cash deposit established in this review; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding (except for Gerber, Guangxi Yulin and Shantou Hongda, whose cash-deposit rates have changed in this review to the PRC-wide entity rate, as noted below); (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including

[8] The PRC-wide rate includes Gerber, Guangxi Yizhou, Nanning Runchao, Raoping Yucun, Superlucky, Shenzhen Qunxingyuan, Mei Wei, Zhongjia, Shantou Hongda, Dingyuan, Zhangzhou Jingxiang, Minhui, and Zhangzhou Hongning.

[9] In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent).

[10] In our *Preliminary Results*, for those respondents who reported an entered value, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each applicable importer to calculate an *ad valorem* assessment rate.

Gerber, Dingyuan, Shantou Hongda and Zhangzhou Jingxiang), or in the case of Guangxi Yulin, have been assigned the PRC-wide rate, the cash-deposit rate will be the PRC-wide rate of 198.63 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Issues

General Issues

Comment 1—Can Valuation
Comment 2—Surrogate Values
A. Soil
B. SG&A
C. Labor
D. Water
E. Gypsum
F. Salt
G. Label

Company-Specific Issues

Hengxian

Comment 3—Clerical Errors in Program
Comment 4—Valuation of Can Making Factors of Production
Comment 5—Allocation of Growing Factors of Production
Comment 6—Valuation of Scrap Mushrooms

XITIC

Comment 7—Clerical Errors in Program

Jiufa

Comment 8—Clerical Errors in Program
Comment 9—Valuing Jiufa's Affiliated Producer's FOPs for Self-produced Cans, Lids and Cartons
Comment 10—Verification Changes

COFCO

Comment 11—Clerical Error in Program
Comment 12—AFA on Soil
Comment 13—Jars Provided Free of Charge by U.S. Customer
Comment 14—Conversion Rate for Spawn
Comment 15—Copper Wire Inclusion in COM
Comment 16—FOPs for Brined Mushrooms Produced by Fujian Zishan
Comment 17—Weight Averaging the Factor of Production for the Affiliates

Green Fresh

Comment 18—AFA on CEP Sales
Comment 19—Verification Changes

Gerber

Comment 20—Withdraw From Verification

Guangxi Yulin

Comment 21—Failure To Participate

[FR Doc. E5–5016 Filed 9–13–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

National Animal Disease Center; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–030. Applicant: National Animal Disease Center, U.S. Department of Agriculture. Instrument: Electron Microscope, Model Technai G^2 12 TWIN/BioTWIN. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 70 FR 43125, July 26, 2005. Order Date: August 16, 2004.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of the instrument OR at the time of receipt of the application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–5017 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Oregon Health and Science University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 05–018. Applicant: Oregon Health and Science University, Beaverton, OR 97006. Instrument: TriMScope Beam Multiplexor System. Manufacturer: La Vision Bio Tech, GmbH, Germany. Intended Use: See notice at 70 FR 36117, June 22, 2005. Reasons: The foreign instrument provides pulsed, near infrared light >700 nm which is safer for living biological tissue than visible light and is not damaging to living brain tissue. It also allows deeper penetration into the brain (to <100 μm below the surface). Advice received from: The National Institutes of Health.

Docket Number: 05–024. Applicant: Massachusetts Institute of Technology, Plasma Science and Fusion Center, 150 Albany Street, Cambridge, MA 02139. Instrument: Diagnostic Neutral Beam Injector. Manufacturer: Budker Institute of Nuclear Physics. Intended Use: See notice at 70 FR 43125, July 26, 2005. Reasons: The foreign instrument provides: (1) Beam voltage of 55 kV max, 50 kV nominal and operating range of 20–55 kV, (2) extracted ion current of 7 A max, (3) pulse duration of 1.5 s constant and 3 s with on/off

modulation, (4) beam diameter at FWHM ≤7 cm at focus ($\ell \approx 4$ m) with ≤0.55° half-angle and (5) full-energy fraction ≥70% of source ion current. Advice received from: Lawrence Livermore National Laboratory.

Docket Number: 05–025. Applicant: Massachusetts Institute of Technology, 150 Albany Street, Cambridge, MA 02139. Instrument: Nuclear Magnetic Resonance Magnet, Model JMTC–600/140. Manufacturer: Jastec, Japan. Intended Use: See notice at 70 FR 43125, July 26, 2005. Reasons: The foreign article is a custom-built accessory for an existing instrument with which it will function as a unique persistent-mode, high-homogeneity and high-resolution 600 MHz NMR spectrometer. The domestic manufacturer deemed capable of producing an article meeting the applicant's specifications replied to the request, but declined to offer a bid. Advice received from: A different foreign manufacturer which also submitted an acceptable bid.

Docket Number: 05–026. Applicant: Cornell University, Ithaca, NY 14853–1301. Instrument: Horizontal Bounce Monochromater. Manufacturer: Oxford-Danfysik, United Kingdom. Intended Use: See notice at 70 FR 43125, July 26, 2005. Reasons: The foreign instrument provides: (1) Two highly-stable, monochromatic x-ray beams at 12.66 KeV and 14.78 KeV at the same fixed horizontal exit angle of 29.6 degrees relative to the primary input x-ray beam by vertical translation of one of two liquid-nitrogen cooled silicon single crystals, contained in a high-vacuum enclosure free from mechanical vibrations and (2) acquisition and analysis of monochromatic x-ray scattering data at energies of 12.66 KeV and 14.78 KeV from frozen, macromolecular single crystals with dimensions typically of 20–100 microns. Advice received from: The National Institutes of Health.

Docket Number: 05–029. Applicant: University of Illinois, at Chicago, Chicago, IL 60607–7509. Instrument: Excimer Laser with Preamplifier. Manufacturer: Laser-Labratorium, Germany. Intended Use: See notice at 70 FR 43123, July 26, 2005. Reasons: The foreign instrument provides: (1) Subpicosecond pulse generation (230 fs), (2) high focusability (1–2 μm) and (3) high peak power with good spatial characteristics and a low pulse repetition rate (0–10 Hz). Advice received from: The National Institute of Standards and Technology and a university research laboratory (Comparable case, 3/16/05).

Docket Number: 05–031. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Qarray2 Microarraying System. Manufacturer: Genetix, Ltd., United Kingdom. Intended Use: See notice at 70 FR 43126, July 26, 2005. Reasons: The foreign instrument provides: (1) A high-precision, low-friction print head having pins held precisely in position by two layers of ball bearings with no lateral pin movement for higher accuracy during the printing process, (2) the small point of contact between the ball bearings and the pin allow free movement in the vertical direction with minimal friction, reducing the problem of pin sticking associated with traditional drilled heads, and (3) linear servo motors, that control positioning of the head, have very smooth motion and high accuracy. Advice received from: The National Institutes of Health.

Docket Number: 05–033. Applicant: Seton Hall University, South Orange, NJ. Instrument: Excimer Laser, Model ThinFilmStar. Manufacturer: TuiLaser AG, Germany. Intended Use: See notice at 70 FR 45689, August 8, 2005. Reasons: The foreign instrument provides both: (1) 250mJ @ 100Hz and (2) a very fast rise time (2.5 ns). Advice received from: The National Institute of Standards and Technology and a university research laboratory (Comparable case, 3/16/05).

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and we know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–5015 Filed 9–13–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100 W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 05–038. Applicant: University of California, San Diego, Dept. Of Chemistry/Biochemistry, 9500 Gilman Drive, M.C. 0358, La Jolla, CA 92093–0358 Instrument: Low-Temperature Ultra-High Vacuum Scanning Tunneling Microscope. Manufacturer: Omicron NanoTechnology. GmbH, Germany. Intended Use: The instrument is intended to be used to:

(1) Develop a basic understanding of chemically selective adsorption onto chemical sensor materials;

(2) Determine how to optimize interfacial bonding in an effort to reduce defects at the crucial oxide/semiconductor interface present in high-k dielectric MOSFETs;

(3) Develop a method to determine concentrations of antibodies that are present on the surfaces of cancer cells;

(4) Optimize the manufacture and processing of mid-IR focal plane arrays for use in night vision applications.

Application accepted by Commissioner of Customs: August 16, 2005.

Docket Number: 05–039. Applicant: University of Wisconsin-Eau Claire, 105 Garfield Avenue, Eau Claire, WI 54701. Instrument: Automatic Fusion Machine, Model Autofluxer 4. Manufacturer: Breitlander, GmbH, Germany. Intended Use: The instrument is intended to be used to dissolve whole rock powder by a combination fusion/acid digestion for trace element analysis by inductively coupled plasma mass spectrometry for geochemical characterization of geological samples. It will also be used in courses and for student research. Application accepted by Commissioner of Customs: August 16, 2005.

Docket Number: 05–040. Applicant: National Renewable Energy Laboratory, 1617 Cole Blvd., Golden, CO 80401. Instrument: Dual Beam Focused Ion Beam Microscope, Model Nova 200 NanoLab. Manufacturer: FEI Company, The Netherlands. Intended Use: The instrument is intended to be used to study the structure and physical chemistry of semiconductors used for photovoltaics (solar cells). The general goal of these investigations is to better understand the structural and chemical properties and relate them to the optical and electrical performance of these thin

film devices. In addition, the FIB will also be used to characterize a variety of nano-structured materials such as carbon and metal nano-structures used for the development of hydrogen storage systems. Application accepted by Commissioner of Customs: August 16, 2005.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E5–5014 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Final Results of 2003 Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 10, 2005, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2003, through December 31, 2003. We gave interested parties an opportunity to comment on the preliminary results.

Our analysis of the comments received on the preliminary results did not lead to any changes in the net subsidy rates. Therefore, the final results do not differ from the preliminary results. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174.

SUPPLEMENTARY INFORMATION:

Case History

On May 10, 2005, the Department of Commerce (''the Department'') published the preliminary results of these administrative reviews (*see Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews*, 70 FR 24530 (May 10, 2005) (''*Preliminary Results*''). Norsk Hydro Canada, Inc. (''NHCI''), Magnola Metallurgy Inc. (''Magnola''), the Government of Québec, and the Government of Canada submitted case briefs on June 9, 2005. On June 14, 2005, U.S. Magnesium, LLC (''the petitioner'') filed a rebuttal brief.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Reviews

The period for which we are measuring subsidies, or POR, is January 1, 2003, through December 31, 2003.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these administrative reviews are addressed in the September 7, 2005, *Issues and Decision Memorandum for the 2003 Countervailing Duty Administrative Reviews of Pure Magnesium and Alloy Magnesium from Canada* (''*Decision Memorandum*'') to Joseph Spetrini, Acting Assistant Secretary for Import Administration, which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building (''CRU''). In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary results net subsidy rates.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter subject to these reviews. For the period January 1, 2003, through December 31, 2003, we determine the net subsidy rates for the reviewed companies to be as follows:

Manufacturer/exporter	Percent
Net Subsidy Rate: Pure Magnesium	
Norsk Hydro Canada, Inc.	1.21
Net Subsidy Rate: Alloy Magnesium	
Norsk Hydro Canada, Inc.	1.21
Magnola Metallurgy, Inc.	5.40

Assessment Rates

Pursuant to 19 U.S.C. § 1516a(g)(5)(c)(i), the Department will not order the liquidation of entries of pure magnesium or alloy magnesium from Canada exported by NHCI or Magnola on or after January 1, 2003, through December 31, 2003, pending final disposition of a dispute settlement proceeding under NAFTA (USA–CDA–00–1904–09 (panel)) with respect to *Pure and Alloy Magnesium From Canada; Final Results of Full Sunset Review*, 65 FR 41436 (July 5, 2000). Liquidation of NHCI and Magnola entries will occur at the rates described in these final results of reviews, if appropriate, following the final disposition of the previously mentioned NAFTA dispute settlement proceedings.

Cash Deposit Instructions

The Department will instruct U.S. Customs and Border Protection (''CBP'') to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice value on all shipments of the subject merchandise from NHCI and Magnola entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-

specific or country-wide rate applicable to the company (except Timminco Limited, which was excluded from the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*See Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 39392 (August 31, 1992)). Accordingly, the country-wide cash deposit rate that will be applied to non-reviewed companies covered by the orders is that established in *Pure and Alloy Magnesium From Canada: Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: September 7, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

Comments in the Issues and Decision Memorandum

Comment 1: Issuance of Liquidations Instructions at the Final Results for NHCI
Comment 2: NHCI's Cash Deposit Rate
Comment 3: Adjustment of NHCI's CVD Rate
Comment 4: MTM Program Benefits for Magnola
Comment 5: Magnola's Discount Rate

[FR Doc. E5–5018 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030602141–5037–15; I.D. 090805D]

Availability of Grants Funds for Fiscal Year 2006

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; re-opening of competition solicitation.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service publishes this notice to re-open the competitive solicitation for the Coral Reef Ecosystem Studies (CRES) program to provide the public more time to submit proposals

DATES: The new deadline for the receipt of proposals is October 12, 2005, for both electronic and paper applications.

ADDRESSES: The address for submitting Proposals electronically is: *http://www.grants.gov/*. (Electronic submission is strongly encouraged). Paper submissions should be sent to the attention of CRES 2006, Center for Sponsored Coastal Ocean Research (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Dr. Michael Dowgiallo, 301–713–3338 X161, *michael.dowgiallo@noaa.gov*

SUPPLEMENTARY INFORMATION: This program was originally solicited in the **Federal Register** on June 30, 2005, as part of the June, 2005 NOAA Omnibus solicitation. The original deadline for receipt of proposals was 3 p.m., EST, on September 1, 2005. NOAA re-opens the solicitation period to provide the public more time to submit proposals. The new deadline for the receipt of proposals is October 12, 2005, for both electronic and paper applications. All applications that are submitted between September 1, 2005, and the date of publication of this notice will be considered timely. All other requirements for this solicitation remain the same.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See 67 FR 66177; October 30, 2002, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after

an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

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

Dated: September 8, 2005.

Peter N. Gibson,

Acting Deputy Chief Financial Officer, National Oceanic and Atmospheric Administration, National Ocean Service.

[FR Doc. 05–18231 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090605D]

Marine Mammals; File Nos. 1070–1783 and 1075–1788

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that the following individuals have applied in due form for permits to conduct research on marine mammals: Dr. Alejandro Acevedo-Gutierrez, Biology Department, Western Washington University, Bellingham, WA 98225–9160 (File No. 1070–1783); and Dr. Shane B. Kanatous, Department of Internal Medicine, University of Texas, Southwestern Medical Center, 5323 Harry Hines Blvd., Dallas, TX 75390–8573 (File No. 1075–1788).

DATES: Written, telefaxed, or e-mail comments must be received on or before October 14, 2005.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

File No. 1070–1783: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

File No. 1075–1788: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile to (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail to *NMFS.Pr1Comments@noaa.gov*. Include the appropriate document identifier in the subject line of the e-mail comment: File No. 1070–1783 or 1075–1788.

FOR FURTHER INFORMATION CONTACT: Tammy Adams, Shane Guan, or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

File No. 1070–1783: The applicant requests a five-year permit to study temporal and spatial variation in numbers and diet composition of harbor seals (*Phoca vitulina*) in southern Padilla Bay, Washington to determine responses of harbor seals to changes in prey density and the impact of seal behavior on marine protected areas. Fecal samples would be collected from rookeries and haul-out sites for dietary analyses and seals would be counted during aerial and vessel surveys. The applicant requests to harass seals from the Washington Inland Waters Stock during the study. The estimated minimum number of harbor seals in this stock is 12,844 seals.

File No. 1075–1788: The applicant requests a two-year permit to characterize the ontogenetic changes in skeletal muscle physiology in newly weaned, subadult, and adult Weddell seals (*Leptonychotes weddellii*) in the Antarctic and determine the molecular controls that regulate these changes. The applicant proposes to capture 15 adult, 15 juvenile, and 10 weaned pups annually to collect small muscle biopsy samples from the swimming muscles to identify the proteins and transcription factors that regulate the changes in myoglobin concentration, fiber type distribution and aerobic capacity. These results are expected to increase understanding of the ontogeny and molecular mechanisms by which young seals acquire the physiological adaptations necessary to become competent divers and marine predators. The applicant also requests authorization for the research-related mortality of up to two seals per year if complications should arise during sedation and handling.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 8, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–18230 Filed 9–13–05; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 7, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–18334 Filed 9–12–05; 11:52 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 14, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–18335 Filed 9–12–05; 11:52 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 21, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–18336 Filed 9–12–05; 11:52 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, October 28, 2005.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–18337 Filed 9–12–05; 11:52 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prohibits or in effect prevents military recruiter access to the campus, students on campus or student directory information. It also implements the requirements set forth in section 983 of title 10, United States Code, and 32 CFR Part 216. The institution of higher education so identified is:

New York Law School, New York, New York

ADDRESSES: Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Commander Ronda Syring, (703) 695–5529.

Dated: September 8, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18178 Filed 9–13–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 36, 39, 21(b)(6), 24(a), 28(a), 32, 34(b), and 10(a)(3) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment. New language is in bold print.

DATES: Comments on the proposed changes must be received by October 14, 2005.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, telephone (202) 761–1448 (ext. 600).

Proposed Revision to Rule 36

Rule 36. Filing of Pleadings

(a) In general. Pleadings or other papers relative to a case shall be filed in the Clerk's office, 450 E Street, Northwest, Washington, DC 20442–0001, either in person, by mail, or by third-party commercial carrier. *See* Rule 37(b)(2).

(b) Filing in person. (no change).

(c) Filing by mail or third-party commercial carrier. If a pleading or other paper is filed by mail, such filing shall consist of depositing the pleading or other paper with the United States Postal Service, with no less than first-class postage prepaid, properly addressed to the Clerk's office. If a pleading or other paper is filed through a third-party commercial carrier, such filing shall consist of delivery to the commercial carrier for delivery within 3 calendar days.

(d) Time of filing. Pleadings or other papers shall be deemed to have been filed on the date they are delivered to the Clerk's office under subsection (b) or on the date they are mailed or delivered to a commercial carrier under subsection (c). *See* Rules 37(b)(1) and 39(e).

(e) Non-compliant pleadings. (no change).

Explanatory Note for Rule 36 (Filing of Pleadings):

Rule 36 has been amended to allow for filing of pleadings and other papers by ''third-party commercial carrier'' (e.g., FedEx or UPS). For purpose of filing, if a commercial carrier is used it must be for delivery within 3 calendar days. This rule change was made to reflect the fact that third-party commercial carriers are well-established and this means of delivery of documents should be available to counsel. The rule is consistent with the Federal Rules of Appellate Procedure, Rule 25(B), relating to briefs. Those rules, however, would not deem other pleadings or papers filed until they are received by the Clerk of the Court.

Proposed Revision to Rule 39

Rule 39. Service of Pleadings

(a) In general. At or before the filing of any pleading or other paper relative to a case in the Clerk's office, a copy thereof shall be served on all counsel of record, including *amicus curiae* counsel, in person, by mail, by third-party commercial carrier, or by electronic means if the party being served consents. *See* Rule 16(b). When a party is not represented by counsel, service shall be made on such party in person, by mail, or by third-party commercial carrier. When reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service must be at least as expeditious as the manner used to file the pleading or other paper with the Court. *See* Rule 36.

(b) Personal service. (no change).

(c) Service by mail. (no change).

(d) Service by third-party commercial carrier. If service is made by a third-party commercial carrier, it shall be for delivery within 3 calendar days.

(e) Time of service. Personal service is complete on delivery. Service by mail or third-party commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete upon transmission.

(f) Certificate for review. (no change other than redesignation of subparagraph).

(g) Form of certificate of filing and service. A certificate indicating the specific manner of filing under Rule 36 and the specific manner of service under this rule shall be included in any pleading or other paper substantially in the following form:

Certificate of Filing and Service

I certify that the original and seven copies of the foregoing were [delivered] (or) [mailed—specify class] (or) [delivered to—specify the name of the third-party commercial carrier—for delivery-specify within how many days delivery will be effected] to the Court on _____ (date) and _____ that a copy of the foregoing was [delivered] (or) [mailed—specify class] (or [delivered to—specify the name of the third-party commercial carrier-for delivery—specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served—specify the electronic mail address or facsimile number used] to (enter specific name of each counsel of record or party, if not represented) on _____ (date).

_____

(Typed name and signature of certifying person)

_____

(Address and telephone no. of certifying person)

Explanatory Note for Rule 39 (Service of Pleadings):

Rule 39 has been amended to allow for service of pleadings and other papers by third-party commercial carrier. For purpose of service, if a commercial carrier is used it must be for delivery within 3 calendar days. This rule change was made to reflect the fact that third-party commercial carriers are well-established and this means of delivery of documents should be available to counsel. A similar provision can be found in the Federal Rules of Appellate Procedure, Rule 25(c)(1)(C). Under the rule, generally, service should be as expeditious as filing.

Rule 39 also allows for service of documents by electronic means with the consent of the party being served, if the party is represented by counsel. Service by facsimile or by e-mail is faster and more economical. It also gives the party being served the opportunity to start work on a reply (if any) and to share the document with others (co-counsel, etc.) promptly and efficiently. The rule only applies when both sides are represented by counsel. The Federal Rules of Appellate Procedure, Rule 25(c)(1)(C), allows for electronic service with consent but the consent must be in writing.

Other Rules Requiring Change Due To the Above

Proposed Revision To Rule 21(b)(6):

(6) A certificate of filing and service in accordance with Rule 39(g).

Proposed Revision To Rules 24(a), 28(a), and 32:

Rules 24(a), 28(a), and 32, pertaining to certificates of filing and service for Briefs, Petitions for Extraordinary Relief, and Petitions for Reconsideration:

Rule 24(a):

Certificate of Filing and Service

I certify that a copy of the foregoing was [delivered] (or) [mailed—specify class] (or) [delivered to-specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] to the Court and [delivered] (or) [mailed-specify class] (or) [delivered to—specify the name of the third—party commercial carrier—for delivery and specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served] to _____ (e-mail or facsimile no.) on _____ (date).

Where more than one counsel or party is being served, the certificate should specify how each party or counsel was served.

_____

(Typed name and signature of certifying person)

_____

(Address and telephone no. of certifying person)

Rule 28(a):

Certificate of Filing and Service

I certify that a copy of the foregoing was [delivered] (or) [mailed—specify class] (or) [delivered to-specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] to the Court, [delivered] (or) [mailed-specify class] (or) [delivered to-specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] (or) to the [trial or appellate military judge whose decision, judgment, or order is the subject of the petition], and [delivered] (or) [mailed—specify class] (or) [delivered to—specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of the counsel being served—specify the electronic mail address or facsimile number used] to _____ (e-mail or facsimile no.), the [respondent] [appellee] on _____ (date).

_____

(Typed name and signature)

_____

(Address and telephone no.)

Rule 32:

Certificate of Filing and Service

I certify that a copy of the foregoing was [delivered] (or) [mailed—specify class] (or) [delivered to—specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] to the Court and [delivered] (or) [mailed-specify class] (or) [delivered to—specify the name of the third-party commercial carrier—for delivery and specify within how many days delivery will be effected] (or) [transmitted by electronic means with the consent of counsel being served] to the [appellant] [appellee] [petitioned] [respondent] on _____ (date).

_____

(Typed name and signature)

_____

(Address and telephone no.)

Rule 34(b):

(b) Additional time when service not made in person.

Whenever a party has the right or is required to do some act within a prescribed period after the issuance of an order or the filing of a notice, pleading, or other paper relative to a case when service thereof is made upon him by mail, 5 days will be added to the prescribed period if the party upon whom the service is made is within the limits of the contiguous 48 States and the District of Columbia, and 15 days will be added if the party is located outside these limits, including the States of Alaska and Hawaii. If service is made by delivery to commercial third-party carrier or electronically, an additional 3 days will be added to the prescribed period, regardless of the location where service is made. This provision for additional time shall not apply, however, to the time limitations prescribed in Rule 19(a)(1) for the filing of a petition for grant of review.

Explanatory Note for Rules 21(b)(6), 24(a), 28(a), 32, and 34(b):

Rules 21(b)(6), 24(a), 28(a), 32, and 34(b) pertaining to certificates of filing and service have been amended to reflect the changes in Rules 36 and 39.

Rule 10(a)(3):

(3) a special docket to the matters arising under Rule 15 concerning complaints of unprofessional conduct against a member of the Bar of this Court, and petitions and other correspondence that are not docketed on another docket, and that are returned to the sender.

Explanatory Note for Rule 10(a)(3):

This amendment establishes a new special docket for documents that are returned to the sender without the Court taking any action. The reason for this change is to retain a record of the receipt by the Court of the document as well as the decision to not take any action or to docket the document on the regular docket kept by the Court.

Dated: September 8, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18177 Filed 9–13–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 7, 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: Impact Evaluation of Charter School Strategies—Student, Parent, Principal, and Authorizer Surveys.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,150.

Burden Hours: 825.

Abstract: This OMB package requests clearance for a set of data collection activities to be used in the Impact Evaluation of Charter School Strategies that includes surveys of students, their parents, principals, and charter school authorizers. This submission represents the second in a two-stage clearance process. The first stage resulted in a January 2005 approval (OMB 1850–0799) for the evaluation design, sampling and analysis plan, and for initial data collection activities necessary for random assignment (consent form, baseline form, and school records collection). The current submission requests approval for three modest enhancements to the design and for the specific instruments that were only briefly described in the earlier package.

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 2876. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–18179 Filed 9–13–05; 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 14, 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, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 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: Extension.

Title: Annual Report on Appeals Process.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 80.

Burden Hours: 160.

Abstract: Form RSA–722 is needed to meet specific data collection requirements in Subsections 102(c)(8)(A) and (B) of the Rehabilitation Act of 1973, as amended on the number of requests for mediation, hearings and reviews filed. The information collected is used to evaluate the types of complaints made by applicants for and eligible individuals of the vocational rehabilitation program and the final resolution of appeals filed. Respondents are State agencies that administer the Federal/State Program for Vocational Rehabilitation.

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 2811. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. 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 Sheila Carey at her e-mail address *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.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

Frequency: On Occasion; once prior to FY2007.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 57.

Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973 as amended (Act), and its implementing Federal Regulations at 34 CFR part 381, require the PAIR grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the Act. The Act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the Act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*)

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 2810. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–245–6623. 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 Sheila Carey at her e-mail address *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.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: A Study of the Addition of Literacy Services for Vocational Rehabilitation Consumers.

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 14,522.

Burden Hours: 6,835.

Abstract: This submission is for the collection of data for the ''Evaluation of Projects Demonstrating the Use of Adult Education Literacy Services by State Vocational Rehabilitation Agencies to Improve Earnings of Individuals with Disabilities.'' The data collection to be approved includes standardized testing instruments, case file summary forms, a teacher rating form, a telephone interview form, and site visit interview and focus group guides.

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 2805. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–245–6623. 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 Sheila Carey at her e-mail address *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. 05–18180 Filed 9–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 6, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–268, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and Discussion on the Updated Site-Wide Water Balance for Rocky Flats.

2. Approval of the Board's 2006 Work Plan and Budget.

3. Progress Update on Regulatory Closure Activities at Rocky Flats.

4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on September 8, 2005.

Carol Matthews,

Acting Committee Management Officer.

[FR Doc. 05–18225 Filed 9–13–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management

Notice of Availability of Draft Section 3116 Determination Idaho Nuclear Technology and Engineering Center Tank Farm Facility

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of a draft determination that certain residual radioactive waste at the Idaho Nuclear Technology and Engineering Center (INTEC) Tank Farm Facility, located at the Idaho National Laboratory, is not high-level radioactive waste. DOE prepared the draft determination pursuant to Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Although not required by the Act, DOE is making the draft determination available for public review and comment.

DATES: The comment period will end on October 28, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: The draft waste determination is available on the Internet at *http://apps.em.doe.gov/idwd/*, and is publicly available for review at the following locations: U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586–5955, or Fax: (202) 586–0575; and U.S. Department of Energy Idaho, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83415, Phone: (208) 526–9162, or Fax: (208) 526–1697. Written comments should be addressed to: Mr. Matthew Duchesne, U.S. Department of Energy, Office of Environmental Management, EM–2, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments can be filed electronically by e-mail to *emidahotankfarmwd@hq.doe.gov*, or by Fax at (202) 586–4314.

SUPPLEMENTARY INFORMATION: The Tank Farm Facility (TFF) at INTEC consists of eleven 300,000-gallon, below-grade, stainless-steel tanks in unlined concrete vaults; four 30,000-gallon, below-grade, stainless-steel tanks; and associated ancillary equipment and piping. Historically, the TFF tanks were used to store various INTEC wastes, including those from reprocessing spent nuclear fuel, decontamination waste, laboratory waste, and contaminated liquids from other INTEC operations. DOE is currently in the process of closing the

TFF, a process that includes consolidating remaining wastes in the minimum number of tanks necessary, and then cleaning the empty tanks and ancillary equipment. After completing cleaning operations, a small amount of residual radioactive waste that cannot be removed remains in the tanks and ancillary equipment. DOE plans to stabilize this residual waste, as well as the TFF system overall, by filling the system with grout.

Section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 authorizes the Secretary of Energy, in consultation with the Nuclear Regulatory Commission (NRC), to determine that certain waste from reprocessing spent nuclear fuel is not high-level waste (HLW) and that it may instead be disposed of as low-level waste (LLW) if it meets the criteria set forth in Section 3116. The draft determination sets forth the basis for concluding that the TFF residual wastes, as well as the tanks, vaults, and associated piping, structures, and equipment will meet all of those criteria, and thus is not high-level waste.

Final Determination: DOE will issue a final determination following the completion of consultation with the NRC, and consideration of any public comments.

Issued in Washington, DC, on September 8, 2005.

Charles E. Anderson,

Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 05–18224 Filed 9–13–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7968–5]

National Drinking Water Advisory Council's Working Group on Public Education Requirements of the Lead and Copper Rule Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the first public meeting of the Working Group of the National Drinking Water Advisory Council (NDWAC) on the Public Education Requirements of the Lead and Copper Rule (WGPE). The purpose of this meeting is to provide an opportunity for the WGPE members to begin discussions on the public education requirements of the Lead and Copper Rule.

DATES: The first meeting of the WGPE will be held in Washington, DC on October 5th from 8:30 a.m. to 5 p.m. and October 6th from 8 a.m. to 1 p.m.

ADDRESSES: The WGPE meeting will take place at RESOLVE, Inc., 1255 23rd St., NW., Suite 275, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Elizabeth McDermott, Designated Federal Officer, National Drinking Water Advisory Council Working Group on Public Education, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Drinking Water Protection Division (Mail Code 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. Please contact Elizabeth McDermott at *mcdermott.elizabeth@epa.gov*, or call 202–564–1603 to receive additional details.

SUPPLEMENTARY INFORMATION: *Background:* The charge for the Working Group on the Public Education Requirements of the Lead and Copper Rule (WGPE) is to (1) review the current lead public education requirements to find and define the need for improvements and make recommendations to the full NDWAC accordingly; (2) develop language for communicating the risk of lead and a suggested response to the public; and (3) define the delivery means to the public. The NDWAC established a target date of May 2006 to complete these tasks. The WGPE is comprised of 15 members from drinking water industries, stakeholder organizations, state and local officials, public health officials, environmental organizations, and risk communication experts.

Public Comment: An opportunity for public comment will be provided during the WGPE meeting. Oral statements will be limited to five minutes; it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent by mail to Elizabeth McDermott, Designated Federal Officer for the WGPE, at the mail or email address listed in the **FOR FURTHER INFORMATION CONTACT** section of the notice.

Special Accommodations: Any person needing special accommodations at this meeting, including wheelchair access, should contact Elizabeth McDermott, Designated Federal Officer for the WGPE, at the number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section of the notice. Requests for special accommodations should be made at least five business days in advance of the WGPE meeting.

Dated: September 9, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–18234 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0255; FRL–7736–6]

Pesticide Program Dialogue Committee Performance Measures Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) Performance Measures Work Group on September 26, 2005. An agenda for this meeting is being developed and will be posted on EPA's website. The work group is developing advice and recommendations concerning performance management measures for EPA's pesticide program.

DATES: The meeting will be held on Monday, September 26, 2005 from 10 a.m. to 12 noon.

ADDRESSES: The meeting will be held in EPA's offices at Crystal Mall #2, 1801 S. Bell Street, Arlington, VA in room 1126.

FOR FURTHER INFORMATION CONTACT: Sherry Sterling, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0387; fax number: (703) 308–4776; e-mail address:*sterling.sherry@epa.gov.*

Information on Services for the Handicapped: For information on facilities or services for the handicapped or to request special assistance at the meetings, contact Sherry Sterling at (703) 305–0387 as soon as possible.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are

concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); an the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. 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 identification (ID) number OPP–2005–0255. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides, Pests, Public health, Risk assessment, Tolerance reassessment.

Dated: August 31, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 05–18008 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7968–9]

Science Advisory Board Staff Office; Notification of an Upcoming Science Advisory Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the chartered SAB. The Board will (1) be briefed on strategic science issues facing EPA, (2) continue its planning for SAB activities, and (3) it may review and approve of one or more draft SAB Committee reports.

DATES: September 28, 2005. A public meeting of the Board will be held from 9 a.m. to 5 p.m. (Eastern Time) on September 28, 2005.

ADDRESSES: The September 28, 2005 meeting of the Board will be held in the U.S. EPA Science Advisory Board Conference Center, Third Floor, 1025 F Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this meeting, or the SAB may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202–343–9982) or e-mail at *miller.tom@epa.gov.* The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice—including any specific draft report(s) to be reviewed, will be posted on the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *Background:* (a) *EPA Science Issues and SAB Planning*—The SAB will receive briefings from senior Agency scientists on EPA's strategic science priorities. This will allow the Board to discuss with EPA, the Agency's response to the Board's advisory on the FY 2006 science budget and prepare the Board to plan its advisory interaction with EPA on the FY 2007 science budget. At this meeting, the Board will monitor its own activities in support of EPA's science programs for 2005 and continue its planning of its FY 2006 program.

(b) *Review of SAB Committee Draft Reports:* The Board may review one or more draft SAB panel or committee reports at this meeting. Information on any draft reports to be reviewed, as well as the draft reports, will be on the SAB Web site at: *http://www.epa.gov/sab/drrep.htm* prior to the meeting.

Availability of Review Material for the Board Meeting: A final roster of the Board, the meeting agenda, and any appropriate background documents in support of this meeting will be posted on the SAB Staff Office Web site (*http://www.epa.gov/sab*) prior to the meeting.

Procedures for Providing Public Comment: The Science Advisory Board Staff Office accepts written public comments, and will accommodate oral public comments whenever possible, on issues before the SAB. Requests to provide oral comments at the September 28, 2005 meeting must be made in writing (e-mail, fax or mail) and received by Mr. Miller no later than September 23, 2005. *Oral Comments:* Each individual or group requesting an oral presentation at this face-to-face meeting will be limited to no more than ten minutes per speaker or organization. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the participants and the public at this meeting. *Written Comments:* Written comments should be received in the SAB staff office so

that the comments may be made available to the Board for their consideration. Comments should be supplied to the DFO at the address noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail [acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 2000/98 format)].

Meeting Accommodations: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at the phone number or e-mail address noted above at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 7, 2005.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–18240 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0162; FRL–7731–4]

Carbofuran; Risk Assessment Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's human health risk assessment and related documents for the carbamate pesticide carbofuran, and opens a public comment period on these documents. EPA is developing an Interim Reregistration Eligibility Decision (IRED) for carbofuran through the full 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice opens phase 3 of the 6–Phase process.

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

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0162, may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; fax number: (703) 308–7042; e-mail address:*plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0162. 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.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand

delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0162. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0162. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: 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–2005–0162.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0162. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. 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). Information so marked will not be disclosed except in accordance with 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the human health risk assessment for carbofuran. The environmental fate and effects risk assessment is was previously made available for public comment as announced in a June 24, 2005 **Federal Register**document. Carbofuran is an N-methyl carbamate insecticide and nematicide used to control foliar and soil pests on food and non-food crops. The Agency developed this human health risk assessment as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Carbofuran works as a cholinesterase inhibitor and is used to control pests on food and non-food crops as either a flowable or granular formulation. It is registered for food uses, which include alfalfa, artichoke, banana, barley, coffee, corn (field, pop, and sweet), cotton seed, cucurbits (cucumber, melons, and squash), grapes, oats, pepper, plantain, potato, sorghum, soybean, spinach, sugar beet, sugarcane, sunflower, and wheat. Carbofuran is also registered for non-food uses, which include agricultural fallow land, cotton, ornamental and/or shade trees,

ornamental herbaceous plants, ornamental non-flowering plants, ornamental woody shrubs and vines, pine, and tobacco. Carbofuran is applied by aircraft or ground equipment by methods that include broadcast, banded, in furrow, and drip irrigation. An estimated 1.5 million pounds of carbofuran are used annually.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for carbofuran. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as data pertaining to dietary, drinking water or worker exposure, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to carbofuran, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA plans to review carbofuran through the full 6–Phase public participation process. However, if as a result of comments received during the current Phase 3 public comment period the Agency finds that issues can be resolved without a second comment period in Phase 5, EPA may proceed directly to the end of the process and develop a risk management decision.

Comments should be limited to issues raised within the risk assessment(s) and associated documents. Failure to comment on any such issues as part of this opportunity will not limit a commenter's opportunity to participate in any later notice and comment processes on this matter. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for carbofuran. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 1, 2005

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18242 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0199; FRL–7724–4]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product, *Mycogen Brand B.t. moCry1F* Insect Resistant Corn Seed and *Florbac Slurry* containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)7 and 3(c)5 respectively of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader listed in the table in this unit:

File Symbol	Regulatory Action Leader	Mailing Address	Telephone Number/E-mail Address
68467–4	Sharlene R. Matten	Biopesticides and Pollution Prevention Division (7511C), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	(703) 605–0514 matten.sharlene@epa.gov
73049–68	Alan H. Reynolds	Do.	(703) 605–0515 reynolds.alan@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing 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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0199. 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed uses of *Bacillus thuringiensis var. aizawai* strain PS811 Cry1F insecticidal crystal protein and the genetic material necessary for its production (plasmid insert PHP12537) in Event DAS-06275–8 corn, and *Bacillus thuringiensis var. aizawai* strain NB 200, and information on social, economic, and environmental benefits to be derived from using them. Specifically, the Agency has considered the nature of the chemicals and their patterns of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that uses of *Bacillus thuringiensis var. aizawai* strain PS811 Cry1F insecticidal crystal protein and the genetic material necessary for its production (plasmid insert PHP12537) in Event DAS-06275–8 corn, and *Bacillus thuringiensis var. aizawai* strain NB 200 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

III. Approved Application

1. EPA issued a notice, published in the **Federal Register** of September 1, 2004 (69 FR 53432) (FRL–7370–3), which announced that Mycogen Seeds, c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268, had submitted an application to register the pesticide product, *Mycogen Brand B.t. moCry1F* Insect Resistant Corn Seed (EPA File Symbol 68467-U), a plant-incorporated protectant, containing *Bacillus thuringiensis var. aizawai* strain PS811 Cry1F insecticidal crystal protein and the genetic material necessary for its production (plasmid insert PHP12537) in Event DAS-06275–8. This product was not previously registered.

The Agency received one public comment in response to the September 1, 2004 notice. A private citizen objected to the registration of *Bacillus thuringiensis moCry1F* protein and the genetic material for its production (plasmid insert PHP 12537) in Event DAS-06275-8 corn, based on unspecified environmental and human health effects associated with genetically modified crops. The Agency understands the commenter's concerns. Pursuant to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA conducted an assessment of this plant-incorporated protectant and concluded that it will pose no unreasonable adverse effects to human health or the environment.

This application was approved on May 27, 2005, as *Mycogen Brand B.t. moCry1F* Insect Resistant Corn Seed (EPA Registration Number 68467–4) for control of black cutworm, corn earworm, European corn borer, fall armyworm, Southwestern corn borer, and Western bean cutworm.

2. EPA issued a notice, published in the **Federal Register** of September 19, 2001 (66 FR 48256) (FRL–6794–5), which announced that Valent Biosciences Corporation, 870 Technology Way, Libertyville, IL 60048, had submitted an application to register the pesticide product, *Florbac Slurry*, a microbial insecticide (EPA File Symbol 73049–AI), containing *Bacillus thuringiensis var. aizawai* strain NB 200. This product was not previously registered.

This application was approved on June 10, 2005, as *Florbac Slurry* (EPA Registration Number 73049–68) for manufacturing use.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 1, 2005.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–18243 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7968–6]

Omega Chemical Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i),

notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Omega Chemical Site in Whittier, Los Angeles County, California with 171 de minimis settling parties. The settlement is entered into pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g) and it requires the settling parties to pay $10,189,384 to the United States Environmental Protection Agency (EPA). The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before October 14, 2005.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement may be obtained from Thanne Cox, EPA Region IX, 75 Hawthorne Street, ORC–3, San Francisco, CA 94105, telephone number 415–972–3908. Comments should reference the Omega Chemical Superfund Site, Whittier, California and EPA Docket No. 2004–13 and should be addressed to Thanne Cox at the above address.

FOR FURTHER INFORMATION CONTACT: Thanne Cox, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3908; fax: (415) 947–3570; e-mail: *cox.elizabeth@epa.gov.*

Dated: September 1, 2005.

Keith Takata,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 05–18237 Filed 9–13–05; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

DATE AND TIME: Wednesday, September 21, 2005, 2 p.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and
2. Obligation of Funds for Procurement of Expert Services for a Litigation Case

Closed Session:

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

This notice issued September 12, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05–18371 Filed 9–12–05; 2:43 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 6, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 14, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit PRA comments identified by [CG Docket No. 03–123 and/or OMB Control Number 3060–1053], by any of the following methods:

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

■ Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

■ E-mail: Parties who choose to file by email should submit their comments to Leslie Smith at *Leslie.Smith@fcc.gov* and to Kristy L. LaLonde at *Kristy_L.LaLonde@omb.eop.gov.* Please include the docket number and/or OMB Control number in the subject line of the message.

■ Mail: Parties who choose to file by paper should submit their comments to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503.

■ People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1053.

Type of Review: Revision of a currently approved collection.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–

67 and CG Docket No. 03–123 (*Order*), FCC 05–141.

Form Number: N/A

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3.

Estimated Time per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 24 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 1, 2003, the Commission released the *Declaratory Ruling*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67, FCC 03–190. In the *Declaratory Ruling*, the Commission clarified that one-line captioned telephone voice carry over (VCO) service is a type of telecommunications relay service (TRS) and that eligible providers of such services are eligible to recover their costs in accordance with section 225 of the Communications Act. The Commission also clarified that certain TRS mandatory minimum standards does not apply to one-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules for all current and future captioned telephone VCO service providers, for the same period of time beginning August 1, 2003. The waivers were contingent on the filing of annual reports, for a period of three years, with the Commission. Sections 64.604 (a)(1) and (a)(3) of the Commission's rules, which contained information collection requirements under the PRA became effective on March 26, 2004.

On July 19, 2005, the Commission released a subsequent *Order*, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC 98–67 and CG Docket No. 03–123, FCC 05–141, that clarified two-line captioned telephone VCO service, like one-line captioned telephone VCO service, is a type of TRS eligible for compensation from the Interstate TRS Fund. Also, the Commission clarified that certain TRS mandatory minimum standards do not apply to two-line captioned VCO service, and waived 47 CFR 64.604(a)(1) and (a)(3) of the Commission's rules, for providers who offer two-line captioned VCO service. This clarification increased the number of providers who will be providing one-line and two-line captioned VCO services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18129 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 8, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 14, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and/or to Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L_LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0407.

Title: Section 73.3598, Period of Construction.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 120.

Estimated Time per Response: 15 minutes—3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 240 hours.

Total Annual Cost: 18,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: When a permit is subject to tolling construction is encumbered due to an act of God, or when a construction permit is the subject of administrative or judicial review, 47 CFR Section 73.3598(c) requires a permittee to notify the Commission as promptly as possible and, in any event, within 30 days, and to provide supporting documentation. All notifications must also be filed in the station's local public file. On March 17, 2005, the Commission released a Second Order on Reconsideration and Further Notice of Proposed Rulemaking, In the Matter of the Creation of a Low Power Radio Service, MM Docket NO. 99.25, FCC 05–75. The Second Order on Reconsideration established an interim waiver policy to increase the likelihood that permittees will complete construction and commence operation. Therefore, the Commission delegated to the Media Bureau the authority to consider request for waivers of the construction period as specified in 47 CFR Section 73.3598(a) even if the requirements under the tolling rules are not met. A Low Power FM permittee may request a waiver and the waiver may be granted if the permittee demonstrates that construction of its broadcast facilities cannot be completed within the allotted 18 months for reasons beyond its control, that the permittee expects to be able to complete

construction within the additional 18 months that the construction extension would provide, and that the public interest would be served by the extension.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18251 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 7, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 14, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail sent them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and/or to Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning this information collection send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0896.

Title: Broadcast Auction Form Exhibits.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 3,000.

Estimated Time per Response: 0.5 hours—2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 7,378 hours.

Total Annual Cost: $9,913,100.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission's rules require that broadcast auction participants submit exhibits disclosing ownership, bidding agreements, bidding credit eligibility and engineering data. This data is used by Commission staff to ensure that applicants are qualified to participate in Commission auctions and to ensure that license winners are entitled to receive the new entrant bidding credit, if applicable. Exhibits regarding joint bidding agreements are designed to prevent collusion. Submission of engineering exhibits for non-table services enables the Commission to determine which applications are mutually exclusive.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18252 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

September 2, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 14, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0501.

Title: Section 73.1942, Candidate Rate; Section 76.206, Candidate Rates; Section 76.1611, Political Cable Rates and Classes of Time.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 24,433.

Estimated Time per Response: 0.5 hours to 20 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Semi-annual requirement; Third party disclosure requirement.

Total Annual Burden: 984,293 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 315 of the Communications Act directs broadcast stations and cable operators to charge political candidates the ''lowest unit charge of the station'' for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

47 CFR Section 73.1942 requires broadcast licensees and 47 CFR Section 76.206 requires cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). These rule sections also require licensees and cable TV systems to calculate the lowest unit charge. Broadcast stations and cable systems are also required to review their advertising records throughout the election period to determine whether compliance with these rule sections require that candidates receive rebates or credits.

47 CFR Section 76.1611 requires systems to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18253 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket 03–123; DA 05–2050]

FCC Closes CC Docket No. 98–67, Addressing Telecommunications Relay Services (TRS); All Filings Addressing TRS Matters Should Be Filed In CG Docket No. 03–123

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission closes CC Docket No. 98–67, a docket for telecommunications relay services (TRS) addressing improved TRS services. Filings in CC Docket No. 98–67 will be incorporated into the current docket, CG Docket No. 03–123. Materials submitted in CC Docket No. 98–67 need not be resubmitted. This action is taken to further administrative efficiency and to reflect the new organizational structure of the Commission.

DATES: Effective September 30, 2005.

ADDRESSES: You may submit comments identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Federal Communication's Commission's Web site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone (202) 418–0539 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, (202) 418–2247 (voice), (202) 418–7989 (TTY), or e-mail *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05–2050, released July 22, 2005. All filings addressing TRS matters should now be filed in CG Docket No. 03–123 only (unless responding to a particular document that instructs otherwise). Comments to TRS matters can be filed electronically in CG Docket No. 03–123 via ''EFCS Express.'' To access ''ECFS Express,'' go to *www.fcc.gov,* and click on the ''ECFS Express'' icon on the FCC's homepage. Select ''Telecommunications Relay Service—Docket 03–123,'' click ''Continue,'' and fill in the appropriate information. Please include your name in the body of your comment. More extensive comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. All comments received are viewable by the general public at any time through the Web site.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any

envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

Please note that any comments filed outside official comment periods established by the Commission will be associated with the appropriate proceeding, but will not necessarily be considered in the record. The full text of document DA 05–2050 and copies of any subsequently filed documents relating to this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 05–2050 and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site *www.bcpiweb.com* or call 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document DA 05–2050 can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–18130 Filed 9–13–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 009335–005.

Title: Northwest Marine Terminal Association, Inc. Agreement.

Parties: Port of Anacortes; Port of Astoria; Port of Bellingham; Port of Everett; Port of Grays Harbor; Port of Kalama; Port of Longview; Port of Olympia; Port of Port Angeles; Port of Portland; Port of Seattle; Port of Tacoma; and Port of Vancouver, USA.

Filing Party: Patti A. Fulghum; Executive Secretary; Northwest Marine Terminal Association, Inc.; P.O. Box 5684; Bellevue, WA 98006.

Synopsis: The agreement modification permits parties to vote by proxy.

Agreement No.: 200866–004.

Title: Lease and Operating Agreement.

Parties: Broward County, King Ocean Service de Venezuela, S.A., and King Ocean Services, Ltd.

Filing Party: Candace J. McCann; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement amendment changes the name and domicile of one party and amends the policy on the required notices between the parties.

By order of the Federal Maritime Commission.

Dated: September 9, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–18269 Filed 9–13–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 008786N.

Name: Bermuda Freight Systems Inc.

Address: 969 Newark Turnpike, Kearny, NJ 07032.

Date Revoked: August 18, 2005.

Reason: Failed to maintain a valid bond.

License Number: 012658N.

Name: Elteha International U.S.A., Ltd. dba LTH International.

Address: 5353 West Imperial Highway, Suite 700, Los Angeles, CA 90045.

Date Revoked: August 10, 2005.

Reason: Failed to maintain a valid bond.

License Number: 003170N.

Name: GAP Forwarding, Inc.

Address: 2790 NW 104th Court, Suite 101, Miami, FL 33172.

Date Revoked: May 11, 2005.

Reason: Failed to maintain a valid bond.

License Number: 008832N.

Name: Profes System Incorporated dba All State International Freight Co.

Address: 167–55 148th Avenue, Jamaica, NY 11434.

Date Revoked: August 5, 2005.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–18267 Filed 9–13–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
018861N	Central American Shipping Agency Inc., 55 West Main Street, Freehold, NJ 07728	July 14, 2005.
012702N	S.E.S. International Express, Inc., 10105 Doty Avenue, Unit A, Inglewood, CA 90303	July 20, 2005.
004560F	TUR Enterprises, Inc., dba Seven Winds Shipping, 8160 NW 71 Street, Miami, FL 33166	May 25, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–18268 Filed 9–13–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder-Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Federal Cargo Inc., 7225 NW 68th Street, Unit 12, Miami, FL 33166, Officers: Edward Negron, Vice President (Qualifying Individual), Guido Cardoso, Jr., President

CCL Customs Service, Inc., 9083 S. La Cienega Blvd., Inglewood, CA 90301, Officers: Roger Chiu-Chou Lee, President (Qualifying Individual), Diana Nien Tzu Lee, Secretary

Mahomi Cargo Express Corporation, 1063 West Flagler Street, Miami, FL 33130, Officer: Cinthya Izaguirre, Vice President (Qualifying Individual)

Cross Country Van Lines LLC, 65 Railroad Avenue, Bldg. #5, Ridgefield, NJ 07657, Officer: Raphael Polonia (Qualifying Individual)

Suncargo, Inc., 1457 E. Plaza Blvd., National City, CA 91950, Officers: Eulogio M. Demonteverde, Jr., President (Qualifying Individual), Proserfina M. Demonteverde, Secretary

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Logistics Unlimited, Inc., 1535 Sunland Lane, Costa Mesa, CA 92626, Officers: Michelle Rouillard, Vice President (Qualifying Individual), Ted Shown, President

Freight Brokers Global Services Inc., 1200 Brunswick Avenue, Far Rockaway, NY 11691, Officer: Michael Francis Molfetta, President (Qualifying Individual)

Ground Ocean Air Logistics, Inc., dba G O A L, Inc., 1740 NW 69th Avenue, Miami, FL 33126, Officer: Eric J. Williams, President (Qualifying Individual)

Eastern Mercantile, Inc., 5232 Settlers Park Drive, Virginia Beach, VA 23464, Officers: Richard S. Huang, President (Qualifying Individual), Weiqing Zhou, Vice President

Cargocom USA, 8354 NW 68th Street, Miami, FL 33166, Officer: Alberto Ortiz, President (Qualifying Individual)

Ocean Freight Forwarder-Ocean Transportation Intermediary Applicants:

Solarian Logistics International, 14514 Luthe Road, Houston, TX 77039, Officers: Ezequiel Dario Pitty, Partner (Qualifying Individual), Jair Alberto Pitty, Partner

Reliable Enterprises, 5630 S. Wayside Drive, Houston, TX 77087, Officer: Godsway Amedzrovi, Manager (Qualifying Individual)

Centro America Envos, Inc., 1741 W. Flagler Street, Miami, FL 33135, Officers: Martha Cecilia Arana, President (Qualifying Individual), Israel Arana, Vice President

Atwimah Shipping, 1388 Jesup Avenue, Bronx, NY 10452, Officer: ATA Aduna, Sole Proprietor

Dated: September 9, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–18266 Filed 9–13–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. North American Bancshares, Inc., Sherman, Texas, and Texoma Holding Company, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of State Bank & Trust of Seguin, Seguin, Texas.

Board of Governors of the Federal Reserve System, September 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18190 Filed 9–13–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, September 19, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at

approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, September 9, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–18303 Filed 9–9–05; 4:11 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Performance Measurement On-line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-line Tool was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Training Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on a semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the Program Assessment Rating Tool (PART), an OMB-mandated reporting system that focuses on quantifiable outcome measures, directly related to the expected social impact or public benefit of each federal program. The Children's Bureau will use the aggregated data collected under each federal program. These measurable outcomes will serve as evidence that the federally funded programs are making progress toward achieving broad, legislated program goals.

Respondents: All competitive discretionary grant programs funded by the Children's Bureau.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent (per fiscal year)	Average burden hours per response	Total burden hours (range)
Performance Measurement On-line Tool	Abandoned Infants Assistance Program—Range 30–36.	2	1	60–72
Performance Measurement On-line Tool	Infant Adoption Awareness Program—Range 4–6.	2	1	8–12
Performance Measurement On-line Tool	Adoption Opportunities Program—Range 45–55.	2	1	90–110
Performance Measurement On-line Tool	Child Abuse and Neglect Program—Range 25–32.	2	1	50–64
Performance Measurement On-line Tool	Child Welfare Training Program—Range 45–55.	2	1	90–110
Total	Range 149–184			298–368

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. The e-mail address is: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comment on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility and clarity of information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of publication.

Dated: September 8, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–18258 Filed 9–13–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Secretary's Advisory Committee Meeting

AGENCY: Office of Planning, Research and Evaluation, ACF, HHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the

impact of Head Start Programs. The September 28–29, 2005 meeting provides an opportunity for the Advisory Committee to provide advice on the analysis plans for the study following the June 2005 release on the first impact findings.

DATES: September 28 (9 a.m.–4 p.m.) and 29 (9 a.m.–12:30 p.m.), 2005.

Place: Bethesda Park Clarion Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814; Phone: (301) 654–1000; Fax: (301) 654–0751.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447. The Administration for Children and Families also intends to make material related to this meeting available on the Office of Planning, Research and Evaluation Web site (*http://www.acf.hhs.gov/programs/opre/index.html).* An interpreter for the deaf and hearing impaired will be available upon advance request by calling Xtria at 703–821–6182.

FOR FURTHER INFORMATION CONTACT: Maria Woolverton at 202–205–4039 for substantive information. Contact ACF Office of Public Affairs at 202–401–9215 for press inquiries. Contact Xtria at 703–821–6182 for logistical information.

Dated: September 7, 2005.

Naomi Goldstein,

Director, Office of Planning, Research and Evaluation, ACF.

[FR Doc. 05–18257 Filed 9–13–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0353]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pharmaceutical Development Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed Pharmaceutical Development Study.

DATES: Submit written or electronic comments on the collection of information by November 14, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Pharmaceutical Development Study

FDA's Office of Pharmaceutical Science (OPS) of the Center for Drug Evaluation and Research is proposing collaboration under a Cooperative Research and Development Agreement (CRADA) with Conformia Software, Inc. of Redwood City, CA (hereafter referred to as ''CRADA Partner''), to collect information using focus group discussions with firms to determine what factors may influence pharmaceutical development. These factors include development information bottlenecks, pilot plant information management, manufacturing science, information retrieval, quality systems and pre-clinical development challenges.

The FDA has introduced three new initiatives to help manufacturers develop higher quality drugs faster and cheaper. These initiatives include, but are not limited to, the following:

- Challenge and Opportunity on the Critical Path to New Medical Products (commonly referred to as the ''Critical Path Initiative'')
- Pharmaceutical cGMPs for the 21st Century—A Risk Based Approach
- International Conference on Harmonization (ICH) Steering Committee Guidelines—Pharmaceutical Development, ICH Q8 (Defining the Design Space)

The proposed study is designed to augment and support these initiatives by providing practical industry experiences and feedback to help FDA refine these initiatives. The scope of the proposed collaboration is aligned with FDA's ''Critical Path'' of development--specifically, the area between selection of drug candidates and commercial manufacturing.

Gathering information through this collaboration represents an opportunity for FDA to gain insights into current industry practices and provide the opportunity to better understand the specific factors that contribute to drug development difficulties. There is a perceived reluctance by industry to share information with regulatory bodies (outside of the formal review processes). Therefore, obtaining necessary and timely information through this collaboration will help the Critical Path Initiative progress.

The information collected will be used to create a clearer picture of current development bottlenecks, identify current state practices, highlight potential improvements in production, and provide feedback to FDA on the impact of current regulatory guidance.

Use of information: The three groups who will be involved with the study may benefit by the collection of this information as follows:

• Industry—Participants will compare current drug development practices and processes identified in the study with current FDA guidance. Companies will be able to gain a better understanding of the steps needed to achieve the operational goals introduced through the Critical Path, ICH-Q8, and Pharmaceutical cGMPs for the 21st Century.

• FDA—In its Critical Path initiative, FDA has called for better tools and techniques to be developed to help facilitate and improve productivity. The information gained will provide a better understanding of what steps will be needed to achieve this goal: To help companies reduce time spent in pharmaceutical development and speed the adoption of new technologies aimed at producing higher quality products at reduced costs.

• CRADA Partner—In collaboration with FDA, the CRADA partner will use research findings to better understand informational requirements of companies in the area of pharmaceutical development, particularly as they relate to accomplishing the goals of the three FDA initiatives described previously. This includes tools that may be utilized within the company environment to reduce bottlenecks and enhance communication of key pharmaceutical information, as well as tools that may assist FDA in the review of pharmaceutical development submissions.

Thus the study will assist all three party's understanding of the requirements to address the current state in dealing with pharmaceutical development challenges.

Confidentiality of Respondents: The CRADA Partner will provide an ''Informed Consent'' form to all companies that participate in the study. This form highlights and assures all participants that company-specific responses (or responses unique to a specific company) will not, under any circumstances, be divulged to other participants or the FDA without the company's prior consent. The CRADA Partner will also provide a Confidential Disclosure Agreement (CDA) to all participants assuring them confidentiality of disclosed information and adherence to the Privacy Act.

Participation in the study: The CRADA Partner will post on its Web site an invitation for industry to participate in the study. It will also fax the invitation to 20 of the top pharmaceutical companies and 20 of the top biotech companies. The invitation will be sent to the offices of regulatory affairs, research and development, and information management. The FDA will also post the CRADA abstract on its Web site along with instructions on how to participate in the study. Within each company separate, small focus groups will be formed for the three offices. Company management in consultation with the CRADA Partner will determine the actual makeup of the focus groups, but the objective is to have a cross-functional representation of experienced employees from each office.

Method of study: The CRADA Partner will conduct a preliminary phase of the study with individual representatives of nine firms (through dialogue with the Vice President (VP) of Development), who volunteer for participation in the study. VP of Development and the CRADA Partner will determine the specific representation from each company jointly, but the objective will be to include representatives from the office of regulatory affairs, research and development, and information technology. The results of these preliminary interviews will be used to refine the full study agenda, which will be used to conduct focus group discussions from 25 companies. Both the preliminary phase and the final study agenda will include review and comment by FDA technical and regulatory experts and CRADA Partner personnel.

The CRADA Partner will summarize interview findings for the full study and will remove references to specific firms, or information that could be used to identify specific firms, before sharing information with FDA. Follow-on questions will be identified by consultation between FDA and CRADA Partner personnel and these questions will be addressed in subsequent focus group interviews. Although companies are strongly encouraged to participate in these follow-on interviews, they may discontinue participation at any time.

As an incentive for companies to participate in the study, the CRADA Partner will prepare a confidential report which contrasts practices in each company in comparison with aggregated information from other companies. At all times, the identity of a participating firm will be limited to the company itself and to the CRADA Partner. This blinded methodology is an industry standard methodology for other areas of current state best practices research.

FDA personnel in collaboration will review final results with the CRADA Partner to determine appropriate next steps. These next steps may include training sessions with industry to increase industry awareness of pharmaceutical development practices and opportunities for improving these in conjunction with FDA's manufacturing and related industrialization initiatives; industry workshops to discuss and explore findings of the study; a publication or publications summarizing the study results; additional studies to further expand FDA's understanding of particular aspects of pharmaceutical development that may benefit from regulatory reform and steamlining; and adjustments to FDA's regulatory strategy to help remove unnecessary or unintended burdens on industry.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
25	1	25	20	500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18163 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0349]

Agency Information Collection Activities: Proposed Collection; Comment Request; Food and Drug Administration Survey of Current Manufacturing Practices in the Food Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed survey of current manufacturing practices in the food industry. The purpose of the proposed survey is to improve FDA's understanding of current food industry manufacturing practices. The information will be used to assess what impact, if any, new manufacturing requirements would make on the food industry.

DATES: Submit written or electronic comments on the collection of information by November 14, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Survey of Current Manufacturing Practices in the Food Industry

The authority for FDA to collect the information derives from the FDA Commissioner's authority, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

FDA's regulations in part 110 of Title 21 of the Code of Federal Regulations (21 CFR part 110) describe the methods, equipment, facilities and controls for producing processed food, hereafter referred to as food CGMPs. As the minimum sanitary and processing requirements for producing safe and wholesome food, CGMPs are an important part of regulatory control of the nation's food supply. FDA believes that it is necessary to revisit and modernize the food CGMPs. Since the food CGMPs were last revised in 1986, there have been significant changes in food production technology and important advances in the understanding of foodborne illnesses. Accordingly, the agency will rigorously assess the impacts of any modernization policies on food facilities. To assess the impacts of the modernization policy, information is needed to help understand baseline or current industry practice. At present, however, FDA lacks baseline information on the nature of current manufacturing practices that would serve as part of a regulatory impact analysis.

FDA plans to conduct an Internet survey of all domestic FDA-registered facilities that primarily manufacture or process food and all foreign FDA-registered facilities that primarily manufacture or process food, which are located in those countries that are the largest food exporters to the United States: Japan, Canada, China, France, Italy and Mexico. The Internet survey will be supplemented by extended case study interviews with selected respondents from the survey. The survey and extended case studies will solicit detailed information about six key topics relevant to the food CGMPs modernization effort: employee training, sanitation and personal hygiene, allergen controls, process controls, post-production processing, and recordkeeping. Additionally, FDA will collect information on establishment characteristics, such as facility size and industry, which are expected to correlate with the presence or absence of various manufacturing practices, such as electronic recordkeeping, ongoing employee training in food safety, and product-to-label conformance procedures. The case study interviews will provide qualitative, in-depth information about various factors that influence decisions to implement these types of manufacturing practices, as well as about the circumstances that underlie the cost and effectiveness of such programs. The survey will be sent to every FDA-registered facility in the United States, Japan, Canada, China, France, Italy and Mexico that primarily manufactures or processes food products and that included an e-mail address with their registration. Participation will be voluntary and the respondent identifiers that would permit an association of specific responses to specific respondents will not be accessible to FDA.

The proposed Internet survey will collect the information from respondents electronically. With a custom-designed online survey system, responses will be entered directly into a computer database, eliminating the need for additional coding and data entry operations. Also, the system will ensure that conditional questions are asked in proper order, freeing the

respondent from the need to keep track of the question order and skip patterns. The data quality will also be higher because the instrument will contain built-in edits, prompts, and data validation features.

The Internet survey method was selected due to the following considerations: (1) E-mail addresses of the respondents are available from the FDA Food Facility Registration database and are continuously validated by FDA; (2) the Internet survey method is the least costly to the agency when compared with other modes of collection and generates the timeliest responses; (3) the Internet survey will impose a relatively modest reporting burden on small entities; and (4) the Internet survey method is the only feasible method by which FDA may survey foreign facilities that export food products to the United States.

The Internet survey includes a pledge of confidentiality regarding the contractor's use of the data provided by the respondents. All data will be collected and compiled by Eastern Research Group, Inc. (ERG), an independent consulting firm contracted by FDA. ERG will provide FDA personnel with data compiled in the course of the study. In keeping with longstanding FDA practice, however, ERG will not provide FDA with identifiers that would permit the association of specific responses with a given respondent. Under its contract with FDA, ERG is precluded from releasing to the public any study data or findings without FDA's prior approval.

The key information to be collected includes responses to questions about the following: (1) Training procedures and practices for food production managers, production supervisors, quality control personnel, sanitation and cleaning supervisors and production line employees on the topics of food safety, basic cleaning, sanitizing, sanitation, personal hygiene, specific product and equipment training and allergen control; (2) pest control and sanitation procedures and practices for food contact surfaces, non-food contact surfaces, production areas and warehouses; (3) allergen control procedures and practices for soybean or soybean-based ingredients, peanuts or peanut-based ingredients, finfish and crustacea, tree nuts, milk and other diary products, eggs, and wheat or wheat-based products; (4) process controls, including written procedures for handling incoming raw materials, approving vendors, the calibration of operating equipment, pathogen control, and a Hazard Analysis and Critical Control Point system; (5) recordkeeping practices; (6) the primary operation characteristics conducted at the facility, such as the type of food manufactured or processed for human consumption; and (7) fresh produce and ready to eat packing practice and post harvest operations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Domestic Facilities					
Screener	10,241	1	10,241	.67	683
Completed Survey	15,361	1	15,361	.75	11,520
Total Domestic Facilties					36,355
Foreign Facilities					
Screener	17,565	1	17,565	.67	1,171
Completed Survey	17,565	1	17,565	.75	13,174
Total Foreign Facilities					14,345
Total					50,700

[1]There are no capital costs or maintenance and operating costs associated with this collection of information.

These estimates are based on FDA's registration database and FDA and the contractor's experience with previous surveys. The respondents are divided into two groups: domestic and foreign. We estimate the number of domestic facilities at 45,747 based on information in the registration database. However, we do not expect that all of these firms will participate in the survey. It is possible that the database will contain wrong e-mail addresses or out-of-business facilities, which we estimate will reduce the number of respondents by 20 percent, or 9,149. We estimate that an additional 22 percent, or 10,972, will simply not respond to the survey. Therefore, the number of domestic facilities expected to participate in the survey is 25,602. Among the 54,806 foreign facilities in the registration database, 4,620 are expected to be out of business or have wrong e-mail addresses (or about 8 percent), and 15, 056 (or about 27 percent) are not expected to respond at all. Therefore, it is expected that 35,130 foreign facilities will respond.

Prior to the administration of the survey, the agency plans to conduct a pretest of the final survey to identify and resolve potential problems. The pretest will be conducted with nine participants.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18164 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0554]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Irradiation in the Production, Processing, and Handling of Food'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 2005 (70 FR 15863), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0549. The approval expires on June 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18165 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0350]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reclassification petitions for medical devices.

DATES: Submit written or electronic comments on the collection of information by November 14, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reclassification Petitions for Medical Devices—21 CFR 860.123 (OMB Control Number 0910–0138)—Extension

FDA has the responsibility under sections 513(e), 513(f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e), 360c(f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a device from any one of the three classes (I, II, and III) to another class. The reclassification content regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu of premarket approval for class III devices.

Respondents are device manufacturers seeking reclassification.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
860.123	6	1	6	500	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends and actual reclassification petitions received, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff that are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18221 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0251]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requests for Inspection by an Accredited Person Under the Inspection by Accredited Persons Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requests for Inspection by an Accredited Person Under the Inspection by Accredited Persons Program'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 7, 2005 (70 FR 33179), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0569. The approval expires on August 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18222 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0186]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 14, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notifications—21 CFR 100.2(d) (OMB Control Number 0910–0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

In the **Federal Register** of June 20, 2005 (70 FR 35446), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom used by States. During the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing FDA when it intends to take enforcement action under the act against a particular food located in the State.

Dated: September 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18223 Filed 9–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Soluble Fragments of the IGF1R Ectodomain

Dimiter S. Dimitrov et al. (NCI)
HHS Reference No. E–144–2005/0—Research Tool
Licensing Contact: Michelle A. Booden; 301/451–7337; *boodenm@mail.nih.gov.*

The type 1 insulin-like growth factor (IGF) receptor (IGF1R) is over-expressed by many tumors and mediates proliferation, motility, and protection from apoptosis. Agents that inhibit IGF1R expression or function can potentially block tumor growth and metastasis.

The present invention relates to the identification of soluble fragments of the IGF1R ectodomain, where these fragments bind IGF-I, IGF-II, or the various other ligands of IFG1R. The identified fragment may be useful for identifying agents that block IGF1R and may act as a strong dominant negative inhibitor of tumor growth by blocking the IGF1R pathway. The invention also encompasses other IGF1R fragments or derivatives of the original fragments, methods of identifying IGF1R fragments or other similar fragments in the IGF1R ectodomain, methods of using said fragments to block binding of ligands, and methods of producing antibodies against the IGF1R fragments.

The technology is available for licensing under a biological material license. In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Polymer-Linked Pseudomonas Exotoxin Immunotoxin

Ira Pastan (NCI) et al.
U.S. Provisional Application No. 60/636,007 filed 12 Dec 2004 (HHS Reference No. E–121–2005/0-US–01)
Licensing Contact: Jesse Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

Molecules based on monoclonal antibodies hold the promise of highly selective therapeutics. However, their efficacy can be limited by poor tissue penetration, rapid renal clearance and an immune response to the antibody. The present technology provides an immunotoxin that is modified to overcome such limitations.

The technology relates to polymer-conjugated immunotoxins targeted to the mesothelin tumor cell antigen. These polymer-immunotoxin conjugates possess an enhanced therapeutic index and may provide improved methods of treating tumors and cancers expressing the mesothelin antigen.

Tumor Suppressor Gene Caliban

Mark A. Mortin et al. (NICHD)
U.S. Provisional Application filed 06 Jun 2005 (DHHS Reference No. E–118–2005/0-US–01)
Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov.*

This invention relates to the identification of a tumor suppressor gene named Caliban from Drosophila melanogaster. The inventors have demonstrated that Caliban is very similar to the corresponding human gene and they have shown that the human gene is inactive in human lung cancer cells but active in normal lung cells. For the first time, it has been shown that when full length Caliban is expressed in human lung cancer cells they lose many of their tumorigenic properties. Hence, using gene therapy to replace the inactive gene with full length Caliban may treat cancer. Details of this were published in Bi *et al.*, ''Drosophila caliban, a nuclear export mediator, can function as a tumor suppressor in human lung cancer cells,'' Oncogene advance online publication, August 15, 2005; doi:10.1038/sj.onc.1208962.

This invention also provides a biomarker assay that can be used to determine if the fly or human tumor suppressor Caliban gene product is functioning in cells. This assay uses a peptide from the fly gene Prospero, named HDA, which when fused to a reporter such as green fluorescent protein, is exported from the nucleus when Caliban is working.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

SIPA–1 Gene and SIPA–1 Inhibitor for the Treatment, Prevention and Diagnosis of Cancer

Kent Hunter et al. (NCI)

U.S. Provisional Application No. 60/649,365 filed 02 Feb 2005 (HHS Reference No. E–082–2005/0-US–01); U.S. Provisional Application No. 60/657,943 filed 02 Mar 2005 (HHS Reference No. E–082–2005/1–US–01); U.S. Provisional Application No. 60/695,024 filed 29 Jun 2005 (HHS Reference No. E–216–2005/0–US–01)

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov.*

The technology relates to methods and compositions of matter used to identify and treat metastatic cancer. Using genetics, the inventors identified the mouse Sipa-1 gene as a possible metastasis modifying gene. Further analyses revealed that Sipa-1 expression levels correlate with metastasis. The inventors developed compounds that modulate Sipa-1 expression and reduce metastasis in animal models. The inventors also identified single nucleotide polymorphisms (SNPs) present in the mouse Sipa-1 gene that, if also present in humans, could serve as the basis for diagnosing cancer and metastasis.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions

Steven K. Libutti et al. (NCI)

PCT Patent Application No. PCT/US05/12289 filed 11 Apr 2005 (HHS Reference No. E–124–2004/2–PCT–01)

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov*.

The present invention relates to methods for the diagnosis and staging of thyroid cancer. The invention employs analysis of gene expression using microarrays or quantitative RT-PCR to distinguish between malignant and benign tumors. Primer and probe sequences are described that represent a six gene or ten gene model for diagnosing benign and malignant thyroid cancer. Analysis of the expression of these genes in thyroid lesions taken from patients could be used for molecular classification of the lesions. As analysis of thyroid lesions by traditional means, such as fine needle biopsy with cytologic examination, can result in indeterminate results, the current invention may provide a superior method for molecular diagnoses of thyroid cancer.

This research is described, in part, in Mazzanti et al., ''Using gene expression profiling to differentiate benign versus malignant thyroid tumors,'' Cancer Res. 2004 Apr 15 64(8):2898–2903.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Recombinant Vaccinia Viruses Expressing IL–15 and Methods of Using the Same

Liyanage Perera et al. (NCI)

U.S. Provisional Application No. 60/433,703 filed 16 Dec 2002 (HHS Reference No. E–243–2002/0–US–01); PCT Application No. PCT/US03/39967 filed 15 Dec 2003, which published as WO 2004/058278A1 on 15 Jul 2004 (HHS Reference No. E–243–2002/1–PCT–01); U.S. Patent Application filed 14 Jun 2005 (HHS Reference No. E–243–2002/1–US–02)

Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*.

Vaccinia-based vaccines have a proven record of being effective vaccines in humans as well as in animals. However, accumulating evidence reveals the need for technology to improve the immune responses such vaccines generate.

The present invention discloses recombinant vaccinia viruses capable of expressing interleukin 15 (IL–15), and methods for modulating immune responses using such viruses. This invention shows that by inserting the human IL–15 gene into the vaccinia genome, more effective vaccines can be generated against infectious agents and cancer. Currently, IL–2 has been approved by the FDA for use in the treatment of patients with metastatic renal cell carcinoma or with metastatic melanoma. It has been used as a component of cancer vaccines and in various approaches for the treatment of AIDS. However, administration of IL–2 is associated with activation-induced cell death (AICD), and may lead to death of T-cells that recognize the antigens expressed in the tumor cells. Thus, IL–15 may be a superior agent in the treatment of cancer, or as a component of a vaccine directed towards cancer or infectious agents. Co-expression of IL–15 with antigens during the immunization process, according to the current invention, leads to induction of CD8+ memory T cells with higher avidity that proliferate more effectively in vivo and persist much longer in the immunized individual in addition to enhancing the levels and persistence of antigen specific antibodies thus providing substantially longer lasting cellular and humoral immunity.

This invention has the potential to be used in a variety of ways, including: (i) an improved, more efficacious vaccine candidate for smallpox, (ii) for incorporation into existing vaccinia based vaccines to enhance and confer superior long lasting immune response to viral and cancer antigens, or (iii) as a valuable source material for IL–15 production, especially should IL–15 be proven as an alternate of more efficacious cytokine than IL–2.

This research has been described, in part, in SK Oh et al., ''Coadministration of HIV vaccine vectors with vaccinia viruses expressing IL–15 but not IL–2 induces long-lasting cellular immunity,'' Proc. Natl. Acad. Sci USA 2003 Mar 18;100(6):3392–3397, online publication 10.1073/pnas.0630592100.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Amelioration of Inflammatory Arthritis Targeting the Pre-ligand Assembly Domain (PLAD) of Tumor Necrosis Factor Receptors

Michael J. Lenardo et al. (NIAID)

U.S. Provisional Application No. 60/694,015 filed 24 Jun 2005 (HHS Reference No. E–095–2000/2–US–01)

Licensing Contact: Mojdeh Bahar; 301/435–2950; *baharm@mail.nih.gov*.

The invention relates to compositions of matter and methods for treating arthritis by modulating Tumor Necrosis Factor Alpha (TNFalpha) signaling. TNFalpha plays a key role in the pathogenesis of numerous diseases including rheumatoid and septic arthritis, and other autoimmune and inflammatory diseases. TNFalpha mediates its effects through receptors that contain a Pre-ligand Assembly Domain (PLAD). The inventors have discovered compounds that interfere with PLAD can block the effects of TNFalpha in vitro. Treatment of mice with these compounds in vivo ameliorated disease in several models of arthritis. Therefore, the compositions and methods of the current invention may lead to novel arthritis treatments.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Disubstituted Levendustin A Analogs (Including Adaphostin) and Pharmaceutical Compositions Comprising the Analogs

Venkatacha L. Narayanan et al. (NCI)
U.S. Patent Application No. 09/623,000 filed 25 Aug 2000 (DHHS Reference No. E–013–1998/0–US–07)
Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov*.

Chronic myelogenous leukemia (CML) is almost universally associated with a translocation that juxtaposes the Bcr and Abl genes. Because the resulting kinase, $p210^{Brc/Abl}$, is found exclusively in malignant hematopoietic cells there has been considerable interest in identifying inhibitors of this enzyme. Adaphostin induces cytotoxicity in human leukemia cells by down-regulating $p210^{Bcr/Abl}$, inducing DNA damage and initiating apoptosis. Adaphostin exhibits selectivity for CML myeloid progenitors in vitro and retained its catholicity when cytotoxicity mesylate-resistant K562 cells were examined. Adaphostin may kill a wide range of human leukemia cells and may be effective against other cancer types. The present invention provides pharmaceutical compositions comprising effective amounts of adaphostin. The compound and composition of the present invention may be used for treating human leukemia and other proliferative diseases.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Heterologous Boosting Immunizations

Ronald S. Chamberlain et al. (NCI)
U.S. Patent Application No. 09/171,086 filed 22 Jan 1999 (HHS Reference No. E–087–1996/0-US–04); U.S. Patent Application No. 09/838,987 filed 20 Apr 2001 (HHS Reference No. E–087–1996/0–US–05); U.S. Patent Application No. 11/007,115 filed 08 Dec 2004 (HHS Reference No. E–087–1996/0–US–06); PCT Application No. PCT/US97/06632 filed 21 Apr 1997, which published as WO 97/39771 on 30 Oct 1997 (HHS Reference No. E–087–1996/0–PCT–02); and Canadian Patent Application Serial No. 2,252,406 (HHS Reference No. E–087–1996/0–CA–03)
Licensing Contact: Michelle A. Booden; 301/451–7337; *boodenm@mail.nih.gov*.

The identification of tumor-associated antigens and the cloning of DNA sequences encoding them have enabled the development of anticancer vaccines. Such vaccines target tumors by stimulating an immune response against the antigens. One method of vaccination involves the delivery of antigen-encoding DNA sequences, and a number of recombinant vectors have been used for this purpose. To optimize the efficacy of recombinant vaccines, Dr. Steve Rosenberg and colleagues at the NCI have developed treatment regimens that use two different vectors (*i.e.*, heterologous boosting).

The present invention describes the method of heterologous boosting immunizations, which in essence is the use of a priming vaccination and a boosting vaccination using two different recombinant vectors that contain a similar or different tumor associated antigen (TAA). The use of different recombinant vectors unexpectedly increases and maintains the immune response to most tumor-associated antigens included in the vectors. The claims are directed, but not limited to, various recombinant viral vectors: poxvirus, vaccine, adenovirus, etc. Additional embodiments and claims are directed, but not limited to, melanoma tumor antigens such as Mart1, gp100, or Hep B surface antigen. These tumor antigen expressing recombinant vectors are coupled with distinctly different recombinant vectors, which express various cytokines and co-stimulatory and accessory molecules such as B7–1, B7–2, ICAM–1, etc. This therapeutic intervention could be directed toward multiple human carcinomas but, with respect to this technology, has been customized as a therapeutic intervention for melanoma.

This technology is available under an exclusive or non-exclusive license. In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: September 2, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–18168 Filed 9–13–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Science.
Date: October 20–21, 2005.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Park Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jeanette M. Hosseini, Scientific Review Administrator, National Center For Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–9096.

Dated: September 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18171 Filed 9–13–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the tenth and final meeting of the Commission on Systemic Interoperability.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The mission of the Commission on Systemic Interoperability is to submit a report to the Secretary of Health and Human Services and to Congress on a comprehensive strategy for the adoption and implementation of health care information technology standards that includes a timeline and prioritization for such adoption and implementation. In developing that strategy, the

Commission will consider: (1) The costs and benefits of the standards, both financial impact and quality improvement; (2) The current demand on industry resources to implement the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and other electronic standards, including HIPAA standards; and (3) The most cost-effective and efficient means for industry to implement the standards.

Name of Committee: Commission on Systemic Interoperability.

Date: October 25, 2005.

Time: 10:30 a.m. to 5 p.m.

Agenda: Healthcare Information Technology Standards.

Place: Hart Senate Office Building, Room 216, Constitution Avenue, Washington, DC 20510.

Contact Person: Ms. Dana Haza, Director, Commission on Systemic Interoperability, National Library of Medicine, National Institutes of Health, Building 38, Room 2N21, Bethesda, MD 20894, 301–594–7520, *hazad@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number, and when applicable, the business or professional affiliation of the interested person.

Dated: September 2, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18170 Filed 9–13–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: October 2–4, 2005.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *fungv@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Section.

Date: October 3–4, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov*.

Name of Committee: Renal and Urological Studies Integrated Review Group, Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: October 3–4, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–04–023: Bioengineering Research Partnerships.

Date: October 3, 2005.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering: Digestive Sciences.

Date: October 3, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–1243, *begumn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Mechanisms.

Date: October 3, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radiation Physics.

Date: October 4, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Respiratory Sciences Member Conflicts.

Date: October 5, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ghenima Dirami, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2159, MSC 7818, Bethesda, MD 20892, (301) 594–1321, *diramig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ion Channels and Connexins.

Date: October 5, 2005.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biomedical Imaging Technology and Medical Imaging.

Date: October 5, 2005.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Xiang-Ning Li, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Medical Imaging Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator and Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@crs.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biophysics.

Date: October 6, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7849, Bethesda, MD 20892, 301–435–1220, *chackoge@crs.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Physiology of Obesity and Diabetes Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Injury and Neurovascular Pathologies.

Date: October 6–7, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022D, MSC 7846, Bethesda, MD 20892, (301) 435–1211, *bhagavas@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Biomedical Imaging Technology Study Section.

Date: October 6–7, 2005.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1711, *rosenl@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group, Cell Structure and Function.

Date: October 6–7, 2005.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing.

Date: October 6–7, 2005.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 6, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18169 Filed 9–13–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[1650–ZA02]

Border and Transportation Security; Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT)

AGENCY: Border and Transportation Security Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice identifies additional ports-of-entry that will begin processing aliens in the United States Visitor and Immigrant Status Indicator Technology System no later than December 31, 2005.

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to E.O. 13323), 1365a, and note, 1365b, 1379, 1731–32; 69 FR 53318.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Senior Policy Advisor, US–VISIT, Border and Transportation Security, Department of Homeland Security, 1616 N. Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) has established the United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT), an integrated system that contains

biometric watch list information; records the arrival and departure of aliens; verifies aliens' identities; and authenticates aliens' travel documents through comparison of biometric identifiers. On August 31, 2004, DHS announced the second phase of US–VISIT by requiring certain aliens to provide fingerprints, photographs or other biometric identifiers upon arrival in the United States at land ports-of-entry (POE) identified by Notice in the **Federal Register**. 69 FR 53318.

On November 9, 2004, DHS published a Notice that identified the 50 most trafficked land POEs where US–VISIT would be implemented prior to December 31, 2004. The Notice also included the specific implementation timetable for particular ports of entry. 69 FR 64964. The 50 most trafficked ports of entry were added incrementally beginning November 15, 2004, and ending December 27, 2004. At land border POEs, aliens subject to US–VISIT are enrolled at the secondary inspection area.

While the November 9, 2004, Notice identified only the 50 most trafficked land border POEs for US–VISIT implementation, the August 31 interim final rule established the process to implement applying the US–VISIT program at any POE by requiring DHS to publish a subsequent Notice in the **Federal Register**. This Notice identifies additional POEs that will begin processing aliens in US–VISIT in 2005. These additions will extend the application of US–VISIT arrival procedures to all POEs in which permanent facilities are maintained.

In addition, as stated in the August 31, 2004, interim rule, this Notice identifies only land POEs in which aliens will be enrolled in US–VISIT upon entry into the United States. DHS will announce, through a separate Notice in the **Federal Register**, the biometric data collection program for processing aliens upon departure from the United States at a limited number of sites.

The comment period for the August 31, 2004, interim final rule closed on December 1, 2004. In responding to that rule, several commenters noted the difficulties at land border POEs when major changes are implemented at peak travel periods like the December holiday period. DHS agrees that changes in procedures during peak travel periods can unnecessary impede legitimate travel, and accordingly, DHS is making every effort to implement the majority of these additional POEs before the 2005 holiday season.

This Notice makes no changes to existing US–VISIT requirements, processes or classifications of aliens subject to US–VISIT. This Notice merely identifies additional ports-of-entry that will begin US–VISIT implementation.

The additional Land Border POEs that will begin biometric data collection as part of US–VISIT processing no later than December 31, 2005 are:

Estimated start date of September 26, 2005:

Falcon Heights POE, Falcon Heights, TX.
Amistad Dam, Route 349 and International Border, Amistad Village, TX.
Fort Hancock, Route 1088 and International Border, Fort Hancock, TX.
Sasabe, Highway 286 and International Border, Sasabe, AZ.
Morley Gate, Nogales POE, Nogales, AZ.
Columbus, Route 11 and International Border, Columbus, NM.
Skagway POE, Klondike Highway and International Border, Skagway, AK.
Alcan POE, Alaska Highway and International Border, Alcan, AK.
Dalton's Cache POE, Haines Highway and International Border, Dalton Cache, AK.

Estimated start date of October 26, 2005:

Chief Mountain POE, Route 17 and International Border, Chief Mountain, MT.
Piegan POE, Highway 89 and International Border, Babb, MT.
Del Bonita POE, Chalk Butte Road and International Border, Del Bonita, MT.
Willow Creek POE, Route 241 and International Border, Turner, MT.
Wild Horse POE, Highway 232 and International Border, Harve, MT.
Turner POE, Highway 24 and International Border, Turner, MT.
Morgan POE, Highway 191 and International Border, Loring, MT.
Opheim POE, Route 24 and International Border, Opheim, MT.
Whitetail POE, Highway 411 N. and International Border, Whitetail, MT.
Raymond POE, Highway 16 and International Border, Raymond, MT.
St. John POE, Highway 30 and International Border, St. John, ND.
Danville POE, Highway 21 and International Border, Danville, WA.
Laurier POE, Highway 395 and International Border, Laurier, WA.
Frontier POE, Highway 25 and International Border, Frontier, WA.
Boundary POE, Boundary Highway and International Border, Boundary, WA.
Metaline Falls POE, Highway 31 and International Border, Metaline Falls, WA.
Hansboro POE, Highway 4 and International Border, Hansboro, ND.
Sarles POE, Highway 20 and International Border, Sarles, ND.
Hannah POE, Highway 13 and International Border, Hannah, ND.
Walhalla POE, Highway 32 and International Border, Walhalla, ND.
Fortuna POE, Highway 85 NW and International Border, Fortuna, ND.
Pembina POE, Interstate 29 and International Border, Pembina, ND.
Noonan POE, Highway 40 and International Border, Noonan, ND.
Portal POE, 301 West Railway Avenue, Portal, ND.
Northgate POE, Highway 8 and International Border, Northgate, ND.
Sherwood POE, Highway 28 and International Border, Sherwood, ND.
Antler POE, Highway 256 and International Border, Antler, ND.
Carbury POE, Highway 14 and International Border, Carbury, ND.
Maida POE, Highway 1 and International Border, Maida, ND.
Porthill POE, Highway 1 and International Border, Porthill, ID.
Coburn Gore POE, Route 27 and International Border, Coburn Gore, ME.
Eastport POE, Eastport, ME.
Lancaster POE, Highway 59 and International Border, Lancaster, MN.
Roseau POE, Roseau, MN, including Pine Creek crossing, Highway 89 and International Border.
Baudette POE, Highway 72 and International Border, Baudette, MN.
Roosville POE, Highway 93 N. and International Border, Roosville, MT.
Algonac POE (Ferry), MI.
Marine City POE (Ferry), MI.
Pittsburg POE, Highway 3 and International Border, Pittsburg, NH.
Cape Vincent POE (Ferry), NY.
Ogdensburg POE, Ogdensburg Bridge Plaza, Route 812 and International Border, Ogdensburg, NY.
Trout River POE, State Route 30 and International Border, Trout River, NY.
Chateaugay POE, Route 374 and International Border, Chateaugay, NY.
Mooers POE, Route 219 and International Border, Mooers, NY.
Rouses Point POE, Highway 11 and International Border, Rouses Point, NY.
Highgate Springs POE, Interstate 89 and International Border, Highgate Springs, VT.
West Berkshire POE, West Berkshire Road and International Border, West Berkshire, VT.
Richford/Pinnacle POE, Pinnacle Road and International Border, Richford, VT.
North Troy POE, Route 243 and International Border, North Troy, VT.
Derby Line POE, Interstate 91 and International Border, Derby Line, VT.

Norton POE, Route 114 and International Border, Norton, VT.
Sweetgrass POE, Interstate 15 N. and International Border, Sweetgrass, MT.
Scobey POE, Highway 13 North and International Border, Scobey, MT.
Neche POE, Highway 18 and International Border, Neche, ND.
Ferry POE, Ferry, WA.

Estimated start date of November 28, 2005:

Fort Kent POE, 98 West Maine St, Fort Kent, ME.
Madawaska POE, Bridge Street and International Border, Madawaska, ME.
Hamlin POE, Route 218 and International Border, Hamlin, ME.
Limestone POE, Route 229 East and International Border, Limestone, ME.
Fort Fairfield ME POE, Route 165 and International Border, Fort Fairfield, Maine.
Bridgewater, POE Boundary Road and International Border, Bridgewater, ME.
Houlton POE Interstate 95 and International Border, Houlton, ME.
Lubec POE Route 189 and International Border, Lubec, ME.
Fort Covington POE, Dundee Road and International Border, Fort Covington, NY.
Alburg POE, Route 225 and International Border, Alburg, VT.
Eastport POE, Highway 95 N. and International Border, Eastport, ID.
Ambrose POE, State Highway 42 and International Border, Ambrose, ND.
Westhope POE, Highway 83 and International Border, Westhope, ND.
Dunseith POE, Highway 281 and International Border, Dunseith, ND.
Oroville POE, Highway 97 and International Border, Oroville, WA.
Nighthawk POE, Loomis Oroville Highway and International Border, Nighthawk, WA.

Estimated start date of December 19, 2005:

Los Ebanos POE (Ferry), TX.
Naco, South Towner Avenue and International Border, Naco, AZ.
Antelope Wells, Route 81 and International Border, Antelope Wells, NM.
Warroad POE, State Highway 313 and International Border, Warroad, MN.
Ely POE, Ely, MN.
Grand Portage POE, Highway 61 and International Border, Grand Portage, MN.
Jackson Street Pier POE (Ferry), OH.
Beebe Plain POE, Beebe Plain, VT.
Canaan POE, Route 141 and International Border, Canaan, VT.
Beecher Falls POE, Route 253 and International Border, Beecher Falls, VT.
Alburg Springs POE, Alburg Springs Road and International Border, Alburg Springs, VT.
Morses Line POE, Route 235 and International Border, Morses Line, VT.
Richford POE, Route 139 and International Border, Richford, VT.
East Richford POE, Route 105A and International Border, East Richford, VT.
Vancouver, Canada (Amtrak Station).
Rochester POE (Ferry), NY.
Niagara Falls POE (Amtrak Station), NY.
Champlain POE (Amtrak Station), NY.
Overton Corners POE, Route 276 and International Border, Champlain, NY.
Jackman POE, Route 201 and International Border, Jackman, ME.
Van Buren POE, Bridge Street and International Border, Van Buren, ME.
Vanceboro POE Route 6 (Water Street) and International Border, Vanceboro, ME.
Heart Island (Ferry), NY.
Bar Harbor POE (Ferry), ME.

DHS has included these dates as estimates only. Should changes occur following the publication of this Notice, revised estimated dates can be found on the US–VISIT Web site at *http://www.dhs.gov/us-visit.* Further, DHS will communicate directly with local area news media and civic organizations about POEs impacted by any program changes through a US–VISIT outreach program.

All of these listed ports of entry, however, will begin US-VISIT implementation by December 31, 2005.

Dated: August 22, 2005.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. 05–18220 Filed 9–13–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–30]

Notice of Proposed Information Collection: Comment Request; Requisition for Disbursement of Sections 202 and 811 Capital Advance/Loan Funds

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 14, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Requisition for Disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Control Number, if applicable: 2502–0187.

Description of the need for the information and proposed use: This information collection is used by Owner entities and submitted to HUD on a periodic basis (generally monthly) during the course of construction for the purpose of obtaining Section 202/811 capital advance/loan funds. The information will also be used to identify the Owner, the project, the type of disbursement being requested, the items

to be covered by the disbursement, and the name of the depository holding the Owner's bank account, including the account number.

Agency form numbers, if applicable: HUD–92403–CA and HUD–92403–EH.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 1,230, the number of respondents is 266 generating approximately 2,460 annual responses, the frequency of response is monthly and on occasion, the estimated time needed to prepare the response is approximately 30 minutes.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 6, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E5–5002 Filed 9–13–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4966–N–02]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Aronetta Jo Baylor, Harold L. Bunce, L. Carter Cornick, and Michael F. Hill as members; and James M. Martin as an alternate member to the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0001.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410–3000, telephone (202) 708–1381. (This is not a toll-free number.)

Dated: September 7, 2005.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E5–5003 Filed 9–13–05; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*), as amended (Act). This notice is provided pursuant to Section 10(c) of the Act.

DATES: Written data or comments must be received on or before October 14, 2005.

ADDRESSES: Send written data or comments to the Regional Director (Attention: Peter Fasbender), U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713–5343.

SUPPLEMENTARY INFORMATION: *Permit Application Number:* TE111357.

Applicant: Michigan Department of Natural Resources, Lansing, Michigan.

The applicant requests a permit to take the gray wolf (*Canis lupis*) throughout Michigan. The take would include both lethal and non-lethal control for wolves involved in depredating livestock, livestock guard animals, and pets and is consistent with the State Management Plan for wolves and the 1992 Recovery Plan for the Eastern Timber Wolf. Non-lethal control would involve harassing wolves by using rubber bullets, projectile bean bags, or other scare tactics. These activities are aimed at enhancement of survival of the species in the wild.

Permit Application Number: TE111360.

Applicant: Wisconsin Department of Natural Resources, Madison, Wisconsin.

The applicant requests a permit to take the gray wolf (*Canis lupis*) throughout Wisconsin for research, monitoring, and depredation abatement activities. The take would involve both lethal and non-lethal control for wolves involved in depredating livestock, livestock guard animals, and pets. Non-lethal control would involve harassing wolves by using rubber bullets, projectile bean bags, or other scare tactics. Research and monitoring efforts may involve unintentional injury or death to animals caught during the course of these activities. The taking is consistent with both the State Management Plan for wolves and the 1992 Recovery Plan for the Eastern Timber Wolf. The scientific research and depredation abatement activities are aimed at the enhancement of survival of the species in the wild.

Availability of Documents

Individuals requesting copies of the recovery permit applications should contact the Service by telephone at (612) 713–5343 or by letter (see **ADDRESSES**). Copies of the applications are available for public inspection at the Service's Regional Web site at: *http://www.fws.gov/midwest/NEPA*. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Protection Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Authority: 16 U.S.C. 1539(c).

Dated: September 7, 2005.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 05–18316 Filed 9–12–05; 12:39 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for Howland Island, Baker Island, and Jarvis Island National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is gathering information necessary to prepare Comprehensive Conservation Plans (CCP) and associated environmental documentation for Howland Island National Wildlife Refuge (NWR), Baker Island NWR, and Jarvis Island NWR

(refuges, collectively). These refuges are unincorporated insular areas, or U.S. territories, located near the equator in the Pacific Ocean, approximately 1,300 to 1,600 miles south to southwest of Honolulu, Hawaii, and are administered as units of the National Wildlife Refuge System. The Service is publishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*) and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise the public and other agencies of this effort; (2) to obtain public comments, suggestions, and information on the issues to be addressed in the CCP; and (3) to determine interest from public and other agencies in attending public scoping meetings. Special mailings, newspaper articles, and other media announcements will be used to inform the public and foreign, State, and local government agencies of the opportunities for input throughout the planning process.

DATES: Please provide written comments by October 14, 2005.

ADDRESSES: Address comments, requests for more information, or requests to be added to the mailing list for this project to: Charles Pelizza, Refuge Conservation Planner, Pacific and Remote Islands National Wildlife Refuge Complex, 300 Ala Moana Blvd., Room 5–231, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Charles Pelizza, Refuge Conservation Planner, (808) 792–9490, or visit the following Service Web sites:

(1) *http://pacific.fws.gov/planning.*

(2) *http://www.fws.gov/pacific/pacificislands/wnwr/pbakernwr.html.*

SUPPLEMENTARY INFORMATION: Howland Island NWR, Baker Island NWR, and Jarvis Island NWR, established in 1974, collectively contain the following habitats: Approximately 1,946 acres of emergent island, and 101,806 acres of coral reefs, submerged lands, and associated waters. Howland Island and Baker Island are part of the Phoenix Islands and Jarvis Island is part of the Line Island archipelago. These island refuges and their coral reefs provide habitat for thousands of nesting seabirds, endemic coral reef fish, giant clams, sea turtles, marine mammals, and other endangered species. With the exception of brief research and management visits, the refuges are closed to public visitation to: protect their fragile ecosystems from invasion by exotic species; and provide nesting habitat for seabirds that is free of predators and excessive human disturbance.

By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The purpose of a CCP is to develop a vision for a refuge and provide management guidance for maintenance, restoration, and use of refuge resources during the next 15 years. During the planning process, the Service will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. The comments and suggestions from the public on how the refuges should be managed will be considered during the development of the CCP.

Several preliminary issues have been identified and will be addressed in the CCP. These issues include: continued cooperation and communication with a growing list of partners and cooperators in planning and implementing refuge management activities; evaluating recreational opportunities; increasing opportunities to monitor and collect adequate baseline biological information such as wildlife populations or the presence of invasive species; and improving recognition by the public and other agencies regarding refuge boundaries, mandates, and management activities. Additional issues will be identified during public scoping.

CCP Process: Public Comment Opportunities

With the publication of this notice, the public is encouraged to submit written comments. Public comments received will be used by the Service to identify issues to be considered in preliminary alternatives. As the CCP process progresses, two more public comment periods will be announced and occur as follows: when the preliminary alternatives are developed and released for public review and comments; and when the alternatives are then refined and analyzed in a draft CCP/NEPA document which is also released for public review and comments. All comments received become part of the public record and may be released. Comments already submitted are on record and need not be resubmitted.

Dated: September 6, 2005.

David J. Wesley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 05–18206 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping Meetings and Intent To Prepare an Environmental Assessment for the Proposed Designation of a Nonessential Experimental Population of Rio Grande Silvery Minnow; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), published a notice in the **Federal Register** on August 3, 2005, with an incorrect date for submitting written comments and an incorrect reference to the time period for the scoping meetings. The document advised the public that a draft environmental assessment will be prepared, pursuant to the National Environmental Policy Act of 1969, as amended, in conjunction with a proposed rule to establish, under section 10(j) of the Endangered Species Act of 1973, as amended, a Nonessential Experimental Population of Rio Grande silvery minnow (*Hybognathus amarus*) in the Rio Grande in Big Bend National Park and the Rio Grande Wild and Scenic River in Texas.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading Corrections for the corrected date for submission of comments.

ADDRESSES: Information, comments, or questions related to preparation of the draft environmental assessment and the NEPA process should be submitted to Joy Nicholopoulos, State Administrator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113. Written comments may also be sent by facsimile to (505) 346–2542 or by e-mail to *R2FWE_AL@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Parody, (505) 761–4710.

SUPPLEMENTARY INFORMATION: On August 3, 2005, a document was published in the **Federal Register** (70 FR 44681) with an incorrect date for written comment submission and an incorrect reference to the time period for the scoping meetings.

Correction

In the **Federal Register** of August 3, 2005, in FR Doc. 05–15303 on page 44681, in the first column, correct the **DATES** caption to read: **DATES:** Comments must be submitted directly to the Service (see **ADDRESSES** section) on or

before October 7, 2005, or at any of the three scoping meetings to be held in September 2005.

Dated: September 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–18160 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–134–1610–DQ]

Notice of Call for Nominations for the McInnis Canyons National Conservation Area (NCA) Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is requesting nominations for ten membership positions on the McInnis Canyons National Conservation Area Advisory Council. The Council advises the Secretary and the BLM on resource management issues associated with the McInnis Canyons NCA and Black Ridge Canyons Wilderness.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than October 14, 2005.

ADDRESSES: Send completed nominations to: McInnis Canyons NCA Manager, Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Paul Peck, NCA Manager, (970) 244–3049, *paul_peck@co.blm.gov*.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the McInnis Canyons NCA Advisory Council. Individuals may nominate themselves for Council membership. You may obtain nomination forms at the BLM Grand Junction Field Office, or by contacting the McInnis Canyons NCA Manager (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications to the McInnis Canyons NCA Manager, Grand Junction Field Office, address listed above. You may make nominations for the following categories of interest:

(1) A member of, or nominated by, the Mesa County Board of County Commissioners.

(2) A member of, or nominated by, the Northwest Colorado Resource Advisory Council.

(3) A member nominated by the permittees holding grazing allotments within the NCA or the Black Ridge Canyons Wilderness.

(4) Seven members residing in, or within reasonable proximity to, Mesa County, Colorado, with recognized backgrounds reflecting—

(A) The purposes for which the NCA or Wilderness was established; and

(B) The interests of the stakeholders that are affected by the management of the NCA and Wilderness.

The specific category the nominee would like to represent should be identified in the letter of nomination and on the nomination form. The McInnis Canyons NCA—Grand Junction Field Office will collect the nomination forms and letters of reference, and distribute them to the officials responsible for reviewing and recommending nominations (Board of County Commissioners—Mesa County, the Northwest Colorado Resource Advisory Council, and the BLM). The BLM will then forward recommended nominations to the Secretary of the Interior who has responsibility for making the final decision to appoint individual appointments.

The purpose of the McInnis Canyons NCA Advisory Council is to advise the BLM on the management of the McInnis Canyons NCA and Black Ridge Canyons Wilderness. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies that individual to provide advice from among the categories of interest listed above. Members will serve without monetary compensation but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Paul Peck,

Manager, McInnis Canyons National Conservation Area.

[FR Doc. 05–18261 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The new title for this ICR is ''30 CFR Part 216—Production Accounting, Subpart A—General Provisions, and Subpart B—Oil and Gas, General; and Part 210—Forms and Reports (Forms MMS–4054, Oil and Gas Operations Report, and MMS–4058, Production Allocation Schedule Report).'' The previous title was ''30 CFR Part 216, Production Accounting, Subparts A and B; and Part 210—Forms and Reports.''

DATES: Submit written comments on or before November 14, 2005.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also, include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 216—Production Accounting, Subpart A—General Provisions, and Subpart B—Oil and Gas, General; and Part 210–Forms and Reports (Forms MMS–4054, Oil and Gas Operations Report, and MMS–4058, Production Allocation Schedule Report).

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–4054 and MMS–4058.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage

mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

The MMS financial accounting system is an integrated computer system that includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The financial accounting system also includes payment and sales volumes and values, as reported by payors. The production and royalty volumes are compared to verify that proper royalties are received for the minerals produced.

The production reports provide MMS with ongoing information on lease, unit, or communitization agreement (lease/agreement) and facility production, sales volumes, and inventories. The reports summarize all operations on a lease/agreement or facility during a reporting period. They identify production by the American Petroleum Institute well number and sales by product. Data collected are used as a method of cross-checking reported production with reported sales. Failure to collect this information will prevent MMS from ensuring that all royalties owed on lease production are accurately valued and appropriately paid. Additionally, the data is shared electronically with the Bureau of Land Management, MMS's Offshore Minerals Management, Bureau of Indian Affairs, and tribal and state governments so they can perform their lease management responsibilities. The requirement to report accurately and timely is mandatory.

Form MMS–4054, Oil and Gas Operations Report (OGOR)

This three-part form, submitted monthly, identifies all oil and gas lease production and dispositions. The form is used for all production reporting for Outer Continental Shelf, Federal and Indian lands. Monthly production information is compared with monthly sales and royalty data submitted on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140, expires October 31, 2006) to ensure proper royalties are paid on the oil and gas production reported to MMS. To modify previously submitted reports, the operator has the option of modifying the reporting line (delete/add by detail line) or replacing (overlaying) the previous report. The MMS uses the information from Parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition.

OGOR Part A—Well Production. All operators submit Part A for each lease or agreement with active wells until such wells are abandoned and inventories are disposed. Each line identifies a well/producing interval combination showing well status; days on production; volumes of oil, gas, and water produced; and any volumes injected during the report month.

OGOR Part B—Product Disposition. For any month with production volumes, operators submit Part B to identify the sales, transfers, and lease use of production reported on Part A. A separate line for each disposition shows: (1) The volume of oil, gas, or water; (2) the sales meter or other meter identifier; (3) the gas plant for instances where gas was processed prior to royalty determination; and (4) the quality of production sold.

OGOR Part C—Product Sales from Facility. The lease operators who store their production before selling it must submit Part C. Separate lines for each product identify the storage facility, sales meter if applicable, quality of production sold, beginning and ending storage inventory, volume of sales, and volumes of other gains and losses to inventory.

Form MMS–4058, Production Allocation Schedule Report (PASR)

This form is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination.

Each line identifies a lease or metering point and allocated sales or transferred volumes. Space is provided on each detail line for the operator's property name (area/block), and a column is provided to identify the product that was injected into the pipeline system. To modify previously submitted reports, the operator has the option of modifying (delete/add by detail line) or replacing (overlaying) the previous report. The MMS uses the data to determine whether sales reported by the lessee are reasonable.

Applicable Citations

Applicable citations of the laws pertaining to mineral leases on Federal and Indian lands include: 25 U.S.C. 396d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands); 25 U.S.C. 2103 (Indian Mineral Development Act of 1982); Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]); Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104–200—Sept. 22, 1996); The Mineral Leasing Act (30 U.S.C. 1923); and The Outer Continental Shelf Lands Act (43 U.S.C. 1353).

Public laws pertaining to mineral royalties are located on our website at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.* The Code of Federal Regulations (CFR) citations we are covering in this ICR are 30 CFR parts 210 and 216.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected.

Frequency: Monthly and as required.

Estimated Number and Description of Respondents: 2,500 oil and gas operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 76,631 hours.

We are revising this ICR to include reporting requirements that were overlooked in the previous renewal (§§ 216.2 and 216.30), and we have adjusted the burden hours accordingly. These reporting requirements are considered rare and/or unusual circumstances.

The following chart details the estimated burden hours by CFR section and paragraph. In calculating the burdens, we assume that respondents perform certain requirements in the

normal course of their business activities. Therefore, we consider these usual and customary, and took that into account in estimating the burden.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR parts 210 and 216	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
30 CFR 210—Forms and Reports Subpart A—General Provisions				
210.20(a)	§ 210.20 When is electronic reporting required? (a) You must submit Forms * * * and MMS–4054 to MMS electronically. You must begin reporting electronically according to the following timetable * * *.	.25 hour (Electronic) .25 hour (Manual)	294,000 6,000	73,500 1,500
210.21(c)(1)	§ 210.21 How do you report electronically? (c) Before you may begin reporting electronically: (1) You must submit an electronic sample of your report for MMS approval * * *.	Burden covered under § 210.20(a).		
30 CFR 210—Forms and Reports Subpart B—Oil, Gas, and OCS Sulfur—General				
210.50	§ 210.50 Required Recordkeeping Information required by the MMS shall be filed using the forms prescribed in this subpart * * *. Records may be maintained in * * * or other recorded media that is easily reproducible and readable.	Burden covered under § 210.20(a).		
30 CFR 216—Production Accounting Subpart A—General Provisions				
216.2	§ 216.2 Scope * * * Reporters are required to submit certain production reports to MMS asset forth in this part.	Burden covered under §§ 210.20(a); 216.56(a), (b), and (c); and 216.57.		
216.11	§ 216.11 Electronic reporting You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements in 30 CFR part 210.	Burden covered under § 210.20(a).		
216.16(a)	§ 216.16 Where to report. (a) All reporting forms * * * should be mailed to the Minerals Management Service, Minerals Revenue Management * * *.			
216.21	§ 216.21 General obligations of the reporter. The reporter shall submit accurately, completely, and timely * * * all information forms and other information required by MMS * * *.			
216.40(d)	§ 216.40 Assessments for incorrect or late reports and failure to report. (d) * * * The reporter shall have the burden of proving that a reporting problem was unavoidable.			
216.30	§ 216.30 Special forms and reports When special form and reports * * * are necessary * * *. Such requests will be made in conformity with the requirements of the Paperwork Reduction Act of 1995, and are expected to involve less than 10 respondents annually.	1	1	1
30 CFR 216—Production Accounting Subpart B—Oil and Gas, General				
216.53 (a), (b), and (c)	§ 216.53 Oil and Gas Operations Report. (a) You must file an Oil and Gas Operations Report, Form MMS–4054 * * *. (b) You must submit a Form MMS–4054 for each well for each calendar month * * *. (c) MMS must receive your completed Form MMS–4054 * * *. (1) Electronically * * *. (2) Other than electronically * * *.	Burden covered under § 210.20(a).		
216.56(a), (b), and (c)	§ 216.56 Production Allocation Schedule Report	.1167 hour (Electronic)	7,280	850

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR parts 210 and 216	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
	(a) Any operator of an offshore Facility Measurement Point * * * must file a Production Allocation Schedule Report (Form MMS–4058) * * *. (b) You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month * * *. (c) MMS must receive your Form MMS–4058 * * *. (1) Electronically * * *. (2) Other than electronically * * *.	.25 hour (Manual)	3,120	780
216.57	§ 216.57 Stripper royalty rate reduction notification ... * * * Operators who have been granted a reduced royalty rate(s) * * * must submit a Stripper Royalty Rate. Reduction Notification (Form MMS–4377) to MMS * * *.	Burden covered under OMB Control Number 1010–0090 (expires October 31, 2007).		
Total	.....	.....	310,401	76,631

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: Reporters require access to the Internet through a subscription to an Internet provider service. The annual subscription is estimated at $240 per reporter.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments: Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: August 29, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–18161 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska Region, Chukchi Sea Oil and Gas Lease Sale 193 for Year 2007

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement.

SUMMARY: A Call for Information and Nominations was published in the

Federal Register on February 9, 2005. The Call area was identical to the program area chosen by the Secretary for leasing consideration in the 5-Year Program for 2002–2007—approximately 34 million acres located offshore the coast of Alaska at a distance from shore ranging from 8 nautical miles to 200 nautical miles. Water depths range from 32 feet to 230 feet; a small portion of the northeast corner of the Chukchi Sea area drops to approximately 3,000 feet. Scoping meetings will then be held as needed in appropriate locations.

The response to the February 2005 Call for Information for the Chukchi Sea Planning Area indicated a broader industry interest than envisioned in the ''special'' sale process outlined in the **Federal Register** notice. Instead of nominating a small ''focused'' area, industry commenters proposed consideration of a substantial portion of the planning area. MMS has concluded that consideration of such a large area has merit in light of the significant resource potential and the Administration's goal to expedite exploration of domestic energy resources. However, consideration of such a proposal warrants a more extensive National Environmental Policy Act (NEPA) review than contemplated under the ''special'' sale process that MMS initially considered. Therefore, MMS will initiate a process to prepare a comprehensive ''areawide'' Chukchi Sea EIS. As a result, however, it may not be possible to complete such an EIS in time to allow a sale during the current program. Nonetheless, MMS will initiate the process at this time to preserve the Secretary's options. Commencement of the consultative process in the near future will allow the Secretary to consider a Chukchi lease sale either at the end of the 2002–2007 Program or early in the schedule for the next 5-Year Program for 2007–2012, but only if such a proposed sale is adopted in the next 5-year program. The decision whether to include such a sale will be made during the process of developing the 5-Year Program for 2007–2012.

Our first action to initiate the NEPA review is to issue this NOI. Scoping meetings will then be held as needed in appropriate locations.

DATES: Comments must be received no later than October 31, 2005 in envelopes labeled ''Comments on the Notice of Intent to Prepare an EIS for Proposed Chukchi Sea Lease Sale 193 included in the 5-Year Program 2002–2007.''

FOR FURTHER INFORMATION CONTACT: Please call David Johnston at (907) 334–5273 in MMS's Alaska OCS Region regarding questions on the NOI.

SUPPLEMENTARY INFORMATION:

Notice of Intent To Prepare an Environmental Impact Statement

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)) (NEPA).

2. Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare an EIS for the Chukchi Sea Oil and Gas Lease Sale 193, which is identified in the 5-Year Program (July 2002 through June 2007). The EIS analysis will focus on the potential environmental effects of the sale, exploration, development and production in the areas selected to be considered for leasing. This NOI also serves to announce the initiation of the scoping process for this EIS. Throughout the scoping process, Federal, State, Tribal, and local governments and other interested parties aid MMS in determining the significant issues, potential alternatives, mitigating measures and alternatives to be analyzed in the EIS and the possible need for additional information. Alternatives to the proposals that may be considered are to delay the sale; modify the size, area, or terms of the sale; or cancel the sale. These and any additional alternatives developed through the scoping and analytical process will be considered in the sale-specific decision process. Scoping is intended to solicit input on the scope of the EIS—specifically the issues, alternatives, and mitigation measures. Scoping meetings will be held, as needed, in appropriate locations that MMS will announce at a later date.

3. Instructions on Notice of Intent

Federal, state, tribal, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and potential alternatives and mitigating measures that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an EIS on Proposed Chukchi Sea Lease Sale 193 included in the 5-Year Program, 2002–2007.'' Comments are due no later than October 31, 2005.

If you wish to comment on this decision or provide scoping comments on the EIS, you may submit your comments by any one the following methods:

- You may mail comments to: Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska, 99503–5823, *http://www.mms.gov/alaska*.
- You may also comment via e-mail to *ChukchiSeaSale193@mms.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''*Attn: Sale 193 EIS*'', in the subject line, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (907) 334–5207.
- Finally, you may hand-deliver comments to the address above.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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. 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.

4. Cooperating Agency

The Department of the Interior invites other Federal, state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS. We invite qualified government entities to inquire about cooperating agency status for this lease sale EIS. Per guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and to remember that your role in the environmental analysis neither enlarges nor diminishes the final decision

making authority of any other agency involved in the NEPA process. Upon request, MMS will provide potential cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. You should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies on *Cooperating Agencies in Implementing the Procedural Requirements of The National Environmental Policy Act*. A copy of this document is available at: (*http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html*) and (*http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html*).

The MMS, as the lead agency, will not be providing financial assistance to cooperating agencies. Even if your organization is not a cooperating agency, you will continue to have opportunities to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process. MMS will also consult with Tribal governments on a Government-to-Government basis. If you would like further information about cooperating agencies, please contact Mr. Paul Stang, Regional Supervisor, Leasing and Environment, at the address noted above or by phone at (907) 334–5230.

5. Existing Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Chukchi Sea. Much of this information has been developed as a result of past lease sales and Environmental Impact Statements in the Chukchi Sea. In addition, an extensive environmental, social, and economic studies program has been underway in this area since 1975 in Alaska. The emphasis has been on geologic mapping, environmental characterization of biologically-sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5280, or by written request at the address stated under NOI comments above. A request may also be made via the Alaska Region Web site at *http://www.mms.gov/alaska/ref/pubindex/pubsindex.htm*.

Dated: August 30, 2005.

Francis Hodsoll,

Acting Director, Minerals Management Service.

[FR Doc. 05–18281 Filed 9–13–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 1, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Construction Recordkeeping and Reporting.

OMB Number: 1215–0163.

Frequency: Annually.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 178,487.

Annual Reponses: 178,487.

Average Response Time: Varies.

Total Annual Burden Hours: 1,710,325.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: 41 CFR chapter 60 sets out the purpose and scope of the affirmative action requirements for construction contractors. Accordingly, contractors should implement the specific affirmative action steps in accordance with 41 CFR 60–4.3(a)7. The recordkeeping and reporting by Federal and Federally assisted construction contractors and subcontractors is necessary to substantiate their compliance with nondiscrimination and affirmative action contractual obligations.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05–18214 Filed 9–13–05; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; ETA–204 Experience Rating Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of

information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before November 14, 2005.

ADDRESSES: Send comments to Edward M. Dullaghan, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Ave. NW., Washington, DC, 20210; telephone number (202) 693–2927 (this is not a toll-free number); e-mail *dullaghan.edward@dol.gov*; fax (202) 693–2874.

SUPPLEMENTARY INFORMATION:

I. Background

The data submitted annually on the ETA–204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance program on a state-by-state basis and to measure the variations in assigned contribution rates which result from different experience rating systems. Used in conjunction with other data, the ETA–204 assists in determining the effects of certain factors (*e.g.*, seasonality, stabilization, expansion, or contraction in employment, etc.) on the unemployment experience of various groups of employers. The data also provide an early signal for potential solvency problems and are useful in analyzing factors which give rise to these potential problems and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. Further, the data are the basis for determining the Experience Rating Index, which allows for the evaluation of the extent to which benefits in states are effectively charged, noncharged, and ineffectively charged.

II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA–204, Experience Rating Report which:

- Evaluates 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;
- Evaluates 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;
- Enhances the quality, utility, and clarity of the information to be collected; and
- Minimizes 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 submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

III. Current Actions

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Experience Rating Report.
OMB Number: 1205–0164.
Agency Number: ETA–204.
Affected Public: State Government.
Cite/Reference/Form/etc: ETA–204.
Frequency: Annually.
Total Responses: 53.
Average Time per Response: 15 minutes.
Estimated Total Burden Hours: 13.
Total Burden Cost (Operating/Maintaining): $325.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 9, 2005.

Cheryl Atkinson,

Administrator, Office of Workforce Security, Employment and Training Administration.

[FR Doc. 05–18213 Filed 9–13–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Notice of Final Payment or Suspension of Compensation Benefits (LS–208). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 14, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employee in loading, unloading, repairing, or building a vessel. Under Section 914(g) of the Longshore Act, the employer or its insurance carrier must file a report of the compensation paid to a claimant at the time final payment is made. The Act requires that the form must be filed within 16 days of the final payment of compensation with the District Director in the compensation district in which the injury occurred. Form LS–208 requests information regarding the beginning and ending dates of compensation payments, compensation rates, reason payments were terminated and types and amounts of compensation payments. This information collection is currently approved for use through March 31, 2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to notify OWCP district offices that payment of compensation benefits has been stopped or suspended in a case. The report is required by law. The report is necessary for OWCP to determine whether benefits have been suspended in a case and to effectively manage the case file and verify that the injured worker has received all benefits to which he/she is entitled to under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Notice of Final Payment or Suspension of Compensation Benefits.

OMB Number: 1215–0024.

Agency Numbers: LS–208.

Affected Public: Business or other for-profit.

Total Respondents: 500.

Total Annual Responses: 22,722.

Estimated Total Burden Hours: 5,681.

Estimated Time Per Response: 15 minutes.

Frequency: On Occasion.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $16,353.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 8, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–18215 Filed 9–13–05; 8:45 am]

BILLING CODE 4510–CF–P

MERIT SYSTEMS PROTECTION BOARD

Variation From Normal Procedures—Effects of Hurricane Katrina

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of variations from the Board's normal case processing procedures as a result of Hurricane Katrina and the related relief efforts in the gulf coast region of the United States.

DATES: This rule is effective September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Bentley M. Roberts, Jr., Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is providing notice of variations in its normal case processing procedures that have been placed into effect as a result of Hurricane Katrina and the related relief efforts in the gulf coast region of the United States.

The Board's adjudicatory regulations contain time limits for filing documents in Federal employee appeals of agency personnel actions and other matters within the Board's jurisdiction. In addition, MSPB judges issue various orders in the course of an adjudicatory proceeding that set time limits for responses by the parties. The Board's regulations permit five methods of filing and serving documents—regular mail, commercial overnight delivery, facsimile, e-filing, and personal delivery to the appropriate MSPB office. The date of filing by regular mail is determined by the postmark date. For filing by commercial overnight delivery, it is the date the document is delivered to the commercial overnight delivery service. For filing by facsimile, it is the date recorded on the facsimile transmission. For filing electronically, it is the date of the electronic submission. For filing by personal delivery, it is the date the MSPB office receives the document.

At the time of Hurricane Katrina and the related devastation, there were approximately 1,800 cases pending in MSPB regional and field offices and almost 800 cases pending at the Board's headquarters in Washington. It is reasonable to assume, therefore, that a number of filings due to a MSPB office in early September 2005 could not be made in a timely manner. An unknown number of filings of new cases subject to filing deadlines falling in early September, 2005, also may have been affected by the events surrounding Hurricane Katrina.

Several circumstances may have affected filings due in early September, 2005 including the closing of Federal agencies and the displacement of Federal employees in the affected areas.

Accordingly, the Board has placed into effect the following variations from its normal case processing procedures:

1. In MSPB regional and field offices, judges will exercise discretion in accepting filings due in early September, 2005, and for the foreseeable future, that were filed (by any filing method) after the deadline, particularly from the gulf coast region of the United States.

2. At Board headquarters, the Clerk of the Board will exercise discretion in accepting filings due in early September, 2005, and for the foreseeable future, that were filed after the deadline. Normally, a show cause order is issued when a late filing is received, but the Clerk of the Board may accept certain filings, particularly from the gulf coast region of the United States, without issuing a show cause order.

3. Where MSPB case files or evidence were lost or destroyed as a result of devastation by Hurricane Katrina, MSPB judges may grant appropriate continuances until the case files or evidence can be reconstructed or dismiss cases without prejudice to their later re-filing. MSPB offices will also assist the parties in reconstructing case files.

The Board and its employees throughout the country will accommodate parties to MSPB cases whose ability to pursue those cases was affected by Hurricane Katrina. Where the variations from normal case processing procedures set forth above do not adequately address the circumstances in an individual case, the individual circumstances, and appropriate solutions, will be considered on a case-by-case basis. The Board and MSPB judges may waive any Board regulation the application of which is not required by law.

Dated: September 9, 2005.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 05–18256 Filed 9–13–05; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–134)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, Office of the Chief Information Officer, Mail Suite 6M70, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information will be used by the Headquarters Office of Security and Program Protection (OSPP) to help fulfill its responsibilities for facilitating business visits and assignments that support U.S. national interests and NASA's international program interests and operational requirements, and by the Office of External Relations for export control oversight. This information is collected and stored in the NASA Foreign National Management System (NFNMS) and will be used by OSPP to determine acceptability for a foreign national, or U.S. citizen representing a foreign entity, to access NASA installations or facilities for business or high level protocol visit purposes.

II. Method of Collection

Respondents provide unformatted information for specific data fields. Data are provided orally, via a hard copy, or e-mailed to a NASA representative who transfers the information into a database (attached is a printout of the NASA Foreign Nationals Management System data entry form). To ensure data security, access to the electronic data entry form is limited to approved NASA employees or contractors. Direct data entry by respondents is not permitted.

III. Data

Title: NASA Foreign National Access Information.

OMB Number: 2700—XXXX.

Type of Review: New collection.

Affected Public: Foreign nationals and NASA contractors.

Estimated Number of Respondents: 9,900 annually.

Estimated Time Per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 4,950.

Estimated Total Annual Cost: $9,715/year.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology

Dated: September 7, 2005.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–18276 Filed 9–13–05; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 9, Public Records.

3. *The form number if applicable:* NRC–509 and NRC–509A.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Individuals requesting access to records under the Freedom of Information or Privacy Acts, or to records that are already publicly available in the NRC's Public Document Room. Submitters of information containing trade secrets or confidential commercial or financial information who have been notified that the NRC has made an initial determination that the information should be disclosed.

6. *An estimate of the number of annual responses:* 7,987.

7. *The estimated number of annual respondents:* 7,987.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 2,120 (.3 hours per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 9 establishes information collection requirements for individuals making requests for records under the Freedom of Information Act (FOIA) or Privacy Act (PA). It also contains requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests; and requests for expedited processing of requests. The information required from the public is necessary to identify the records they are requesting; to justify requests for waivers or reductions in searching or copying fees; or to justify expedited processing. Section 9.28(b) provides that if the submitter of information designated to be trade secrets or confidential commercial or financial information objects to the disclosure, he must provide a written statement within 30 days that specifies all grounds why the information is a trade secret or commercial or financial information that is privileged or confidential.

Submit, by November 14, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 14, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0043), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 8th day of September, 2005.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–18196 Filed 9–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

The Calvert Cliffs Nuclear Power Plant, Inc. (the licensee) is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorize operation of Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County in Maryland.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.68, ''Criticality accident requirements,'' sets forth requirements for which a licensee shall comply in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24. In particular, subsection (b)(1) of 10 CFR 50.68 requires that plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

By letter dated December 21, 2004, as supplemented on May 31, 2005, the licensee submitted a request for an exemption from the requirements of 10 CFR 50.68(b)(1) during the pent fuel pool (SFP) activities related to the underwater handling, loading, and unloading of the Transnuclear NUHOMS–32P® dry shielded canister (DSC), as described in its proposed Amendment to Materials License No. SNM–2505, dated December 12, 2003, for the plant-specific independent spent fuel storage installation (ISFSI) at CCNPP.

In summary, the licensee is unable to satisfy the above requirement for handling of the Transnuclear NUHOMS–32P® DSC authorized by 10 CFR Part 72 at CCNPP. Section 50.12(a) allows licensees to apply for an exemption from the requirements of 10 CFR Part 50 if the application of the regulation is not necessary to achieve the underlying purpose of the rule and special conditions are met. The licensee stated in its application that compliance with 10 CFR 50.68(b)(1) is not necessary for handling the Transnuclear NUHOMS–32P® DSC system to achieve the underlying purpose of the rule.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Therefore, in determining the acceptability of the licensee's exemption request, the NRC staff has performed the following regulatory, technical, and legal evaluations to satisfy the requirements of 10 CFR 50.12 for granting the exemption.

3.1 Regulatory Evaluation

The CCNPP Technical Specifications (TSs) currently permit the licensee to store spent fuel assemblies in high-density storage racks in its SFP. In accordance with the provisions of 10 CFR 50.68(b)(4), the licensee takes credit for soluble boron for criticality control and ensures that the effective neutron multiplication factor (k_{eff}) of the SFP does not exceed 0.95, if flooded with borated water. Subsection 50.68(b)(4) also requires that if credit is taken for soluble boron, the k_{eff} must remain below 1.0 (subcritical) if flooded with unborated water. However, the licensee is unable to satisfy the requirement to maintain the k_{eff} below 1.0 (subcritical) with unborated water, which is also the requirement of 10 CFR 50.68(b)(1), during cask handling operations in the SFP. Therefore, the licensee proposed an exemption from 10 CFR 50.68(b)(1) to permit the performance of spent fuel loading, unloading, and handling operations related to dry cask storage without being analyzed to be subcritical under the most adverse moderation conditions feasible by unborated water.

Appendix A, ''General Design Criteria (GDC) for Nuclear Power Plants,'' to 10 CFR Part 50 provides a list of the minimum design requirements for nuclear power plants. According to GDC 62, ''Prevention of criticality in fuel storage and handling,'' the licensee must limit the potential for criticality in the fuel handling and storage system by physical systems or processes. Since CCNPP was licensed prior to the issuance of the Appendix A to 10 CFR Part 50, GDC 62 is not directly applicable. However, CCNPP was licensed to the 1967 draft GDC, as discussed in Appendix 1C of the CCNNP Updated Final Safety Analysis Report (UFSAR). The comparable draft GDC is Criterion 66, ''Prevention of Fuel Storage Criticality,'' that states: ''Criticality in new and spent fuel storage shall be prevented by physical systems or processes. Such means as geometrically safe configurations shall be emphasized over procedural controls.''

Section 50.68 of 10 CFR Part 50 provides the NRC requirements for maintaining subcritical conditions in SFPs. Section 50.68 provides criticality control requirements that, if satisfied, ensure that an inadvertent criticality in the SFP is an extremely unlikely event. These requirements ensure that the licensee has appropriately conservative criticality margins during handling and storage of spent fuel. Section 50.68(b)(1) states, ''Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.'' Specifically, 10 CFR 50.68(b)(1) ensures that the licensee will maintain the pool in a subcritical condition during handling and storage operations without crediting the soluble boron in the SFP water.

The licensee is authorized under plant-specific Materials License No. SNM–2505 to construct and operate an ISFSI at CCNPP. The ISFSI permits the licensee to store spent fuel assemblies in large concrete dry storage casks. As part of its ISFSI loading campaigns, the licensee transfers spent fuel assemblies to a DSC in the cask pit area of the SFP. The licensee performed criticality analyses assuming the DSC fully loaded with fuel having the highest permissible reactivity and determined that a soluble boron credit was necessary to ensure that the DSC would remain subcritical in the SFP. Since the licensee is unable to satisfy the requirement of 10 CFR 50.68(b)(1) to ensure subcritical conditions during handling and storage of spent fuel assemblies in the pool with unborated water, the licensee identified the need for an exemption from the 10 CFR 50.68(b)(1) requirement to support DSC loading, unloading, and handling operations without being subcritical under the most adverse moderation conditions feasible by unborated water.

The NRC staff evaluated the possibility of an inadvertent criticality of the spent nuclear fuel at CCNPP during DSC loading, unloading, and handling. The NRC staff has established a set of acceptance criteria that, if met, satisfy the underlying intent of 10 CFR 50.68(b)(1). In lieu of complying with 10 CFR 50.68(b)(1), the NRC staff determined that an inadvertent criticality accident is unlikely to occur if the licensee meets the following five criteria: [1]

1. The cask criticality analyses are based on the following conservative assumptions:

a. All fuel assemblies in the cask are unirradiated and at the highest permissible enrichment,

b. Only 75 percent of the Boron-10 in the fixed poison panel inserts is credited,

c. No credit is taken for fuel-related burnable absorbers, and

d. The cask is assumed to be flooded with moderator at the temperature and density corresponding to optimum moderation.

2. The licensee's ISFSI TSs require the soluble boron concentration to be equal to or greater than the level assumed in the criticality analysis, and surveillance requirements necessitate the periodic verification of the concentration both prior to and during loading and unloading operations.

3. Radiation monitors, as required by GDC 63, ''Monitoring fuel and waste storage,'' are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

4. The quantity of other forms of special nuclear material, such as sources, detectors, etc., to be stored in the cask will not increase the effective multiplication factor above the limit calculated in the criticality analysis.

5. Sufficient time exists for plant personnel to identify and terminate a boron dilution event prior to achieving a critical boron concentration in the DSC. To demonstrate that it can safely identify and terminate a boron dilution event, the licensee must provide the following:

a. A plant-specific criticality analysis to identify the critical boron concentration in the cask based on the highest reactivity loading pattern.

b. A plant-specific boron dilution analysis to identify all potential dilution pathways, their flowrates, and the time necessary to reach a critical boron concentration.

c. A description of all alarms and indications available to promptly alert operators of a boron dilution event.

d. A description of plant controls that will be implemented to minimize the potential for a boron dilution event.

e. A summary of operator training and procedures that will be used to ensure that operators can quickly identify and terminate a boron dilution event.

3.2 Technical Evaluation

In determining the acceptability of the licensee's exemption request, the NRC staff reviewed three aspects of the licensee's analyses: (1) Criticality analyses submitted to support the ISFSI license application and its exemption request, (2) boron dilution analysis, and (3) legal basis for approving the exemption. For each of the aspects, the staff evaluated whether the licensee's analyses and methodologies provide reasonable assurance that adequate safety margins are developed and can be maintained in the CCNPP SFP during loading of spent fuel into canisters for dry cask storage.

3.2.1 Criticality Analyses

For evaluation of the acceptability of the licensee's exemption request, the NRC staff reviewed the criticality analyses provided by the licensee in support of its ISFSI license application.

First, the NRC staff reviewed the methodology and assumptions used by the licensee in its criticality analysis to determine if Criterion 1 of Section 3.1 above was satisfied. The licensee stated that it took no credit in the criticality analyses for burnup or fuel-related burnable neutron absorbers. Specifically, the licensee stated that its criticality analyses did not take credit for integral burnable absorbers, integral fuel burnable absorbers, nor control element assemblies. The licensee also stated that all assemblies were analyzed at the highest permissible enrichment, 4.5 weight percent Uranium-235 at CCNPP. Additionally, the licensee stated that all criticality analyses for a flooded DSC were performed at temperatures and densities of water corresponding to optimum moderation conditions. Finally, the licensee stated that it credited 90 percent of the Boron-10 content for the fixed neutron absorber in the DSC. NUREG–1536, ''Standard Review Plan for Dry Cask Storage System,'' states that ''[f] or a greater credit allowance [*i.e.*, greater than 75 percent for fixed neutron absorbers] special, comprehensive fabrication tests capable of verifying the presence and uniformity of the neutron absorber are needed.'' As part of an amendment to the Part 72 license for the Transnuclear NUHOMS–32P® design, the NRC staff reviewed and accepted the results of additional data supplied by the manufacturer that demonstrated that a 90-percent credit for the fixed neutron absorbers was acceptable. Therefore, for the purposes of this exemption, the staff finds a 90-percent credit acceptable on the basis that it has previously been reviewed and approved by the NRC. Subsequently, based on its review of the criticality analyses and the information submitted in its exemption request, the

[1] The criteria have been used previously in the review of similar exemptions from the requirements of 10 CFR 50.68(b)(1) for Diablo Canyon Units No. 1 and 2 and Sequoyah Units No. 1 and 2. The evaluations for these exemptions are available in the Agencywide Documents Access and Management System under accession numbers ML040300693 and ML041540213, respectively.

NRC staff finds that the licensee has satisfied Criterion 1.

Second, the NRC staff reviewed the proposed CCNPP ISFSI TSs and the licensee's criticality analyses credit soluble boron for reactivity control during DSC loading, unloading, and handling operations. Since the boron concentration is a key safety component necessary for ensuring subcritical conditions in the pool, the licensee must have a conservative ISFSI TS capable of ensuring that sufficient soluble boron is present to perform its safety function. The licensee stated that ISFSI TS Limiting Condition for Operation (LCO) 3.2.1.1 requires that the NUHOMS–32P® DSC cavity be moderated by water with a boron concentration greater than or equal to 2450 ppm to accommodate cask operations. In all cases, the boron concentration required by the ISFSI TS ensures that the k_{eff} will be below 0.95 for the analyzed loading configuration. Additionally, the licensee's ISFSI TS contain surveillance requirements (SRs) that assure it will verify the boron concentration is above the required level both prior to and during DSC loading, unloading, and handling operations. Specifically, SRs 4.2.1.1 and 4.2.1.2 require verification of the boron concentration in the SFP within 24 hours prior to either insertion of the first spent fuel assembly into a DSC for loading operations or flooding the DSC cavity for unloading operations. Additionally, both SRs require the licensee to reconfirm the boron concentration is above the TS LCO limit at intervals not to exceed 48 hours until such time as the DSC is removed from the SFP. Based on its review of the CCNPP ISFSI TS, the NRC staff finds that the licensee has satisfied Criterion 2.

Third, the NRC staff reviewed the CCNPP UFSAR and the information provided by the licensee in its exemption request to ensure that it complies with GDC 63. GDC 63 requires that licensees have radiation monitors in fuel storage and associated handling areas to detect conditions that may result in a loss of residual heat removal capability and excessive radiation levels and initiate appropriate safety actions. As previously described, since CCNPP was licensed prior to the issuance of the GDC listed in Appendix A to 10 CFR Part 50, GDC 63 is not directly applicable. However, CCNPP is licensed to the 1967 draft GDC as discussed in its UFSAR, Appendix 1C. The comparable draft GDC is Criterion 18, ''Monitoring Fuel and Waste Storage,'' that states the following: ''Monitoring and alarm instrumentation shall be provided for fuel and waste storage and handling areas for conditions that might contribute to loss of continuity in decay heat removal and to radiation exposure.'' The NRC staff reviewed the CCNPP UFSAR, 1967 draft GDC, and exemption request to determine whether the licensee had provided sufficient information to demonstrate compliance with the intent of GDC 63. In its exemption request, the licensee stated that three area radiation monitors are provided for detecting high radiation levels in the fuel storage areas. Specifically, the monitors are located in the SFP area, on the spent fuel handling machine, and in the new fuel storage area. At the montors' alarm setpoints, audible and visual alarms annunciate locally and in the Control Room. Based on its review of the exemption request, the CCNPP UFSAR, and the 1967 draft GDC, the NRC staff finds that the licensee has satisfied Criterion 3.

Finally, as part of the criticality analysis review, the NRC staff evaluated the storage of non-fuel-related material in a DSC. The NRC staff evaluated the potential to increase the reactivity of a DSC by loading it with materials other than spent nuclear fuel and fuel debris. The approved contents for storage in the NUHOMS–32P® cask design are listed in the CCNPP ISFSI TS LCO 3.1.1 (1), ''Fuel to be Stored at ISFSI.'' This ISFSI TS LCO restricts the contents of the DSC to only fuels (14 x 14 Combustion Engineering-type pressurized water reactor fuel) irradiated at CCNPP. As such, CCNPP is prohibited from loading other forms of special nuclear material, such as sources, detectors, etc., in the DSC. Therefore, the NRC staff determined that the loading limitations described in the CCNPP ISFSI TSs will ensure that any authorized components loaded in the DSCs will not result in a reactivity increase. Based on its review of the loading restrictions, the NRC staff finds that the licensee has satisfied Criterion 4.

3.2.2 Boron Dilution Analysis

Since the licensee's ISFSI application relies on soluble boron to maintain subcritical conditions within the DSCs during loading, unloading, and handling operations, the NRC staff reviewed the licensee's boron dilution analysis to determine whether appropriate controls, alarms, and procedures were available to identify and terminate a boron dilution accident prior to reaching a critical boron concentration.

By letter dated October 25, 1996, the NRC staff issued a safety evaluation (SE) on licensing topical report WCAP–14416, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology.'' This SE specified that the following issues be evaluated for applications involving soluble boron credit: the events that could cause boron dilution, the time available to detect and mitigate each dilution event, the potential for incomplete boron mixing, and the adequacy of the boron concentration surveillance interval.

In its exemption request, the licensee described the criticality analyses performed to determine the worst-case bounding k_{eff}. The CCNPP criticality calculations employed the KENO V.a code with the 44-group ENDF/B-V cross section library. The calculations determined the minimum soluble boron concentration required to maintain subcriticality ($k_{eff} < 1.0$) following a boron dilution event in a NUHOMS–32P® DSC loaded with fresh 4.5 weight percent enriched fuel assemblies that bound the CCNPP fuel designs (Combustion Engineering (CE) 14 x 14 fuel). The results of the calculations for the bounding case indicate that subcriticality is maintained with 1650 ppm of soluble boron in the SFP.

The TS requirements for the NUHOMS–32P® Cask System include a minimum boron concentration requirement of 2450 ppm boron when spent fuel assemblies with enrichments less than or equal to 4.5 weight-percent (wt-percent) U–235 are loaded into a DSC canister. The approval of this exemption is limited to the DSC loading, unloading, and handling of CE 14 x 14 fuel assemblies enriched to a maximum of 4.5 wt-percent U–235. The use of fuel-related burnable absorbers is credited in the analysis. The NUHOMS–32P® soluble boron TS requirements ensure that k_{eff} is maintained less than 0.95. TS SRs require the boron concentration in the DSC water to be verified within 24 hours prior to the insertion of the first spent fuel assembly into a DSC and reconfirmed at intervals not to exceed 48 hours until such time as the DSC is removed from the SFP.

The licensee contracted with Transnuclear to perform a criticality analysis to determine the soluble boron concentration that results in a k_{eff} equal to 1.0 for 4.5 wt-percent U–235 fuel enrichments using the same methodology as approved in the Standardized NUHOMS Cask System Final Safety Analysis. The analysis determined the critical boron concentration level for 4.5 wt-percent U–235 enriched fuel was 1650 ppm. The boron concentration within the canister would have to decrease from the TS limit to the critical boron concentration before criticality is possible. The licensee based its boron dilution analyses and its preventive and

mitigative actions on dilution sources with the potential to reduce the boron concentration from the TS minimum values for the two fuel enrichment bands to the respective concentration for criticality.

During the current analysis the licensee identified all credible potential sources that could dilute the SFP to critical conditions. The licensee determined that the limiting boron dilution event occurs when water from the fire protection system (FPS), with a maximum flow rate of 1000 gpm from the most limiting hose (a 3-inch diameter with a 2-inch nozzle), is added to the SFP. The licensee's calculations show that at least 4 hours will be available to terminate the event before the DSC water boron concentration decreases from 2450 ppm to the critical concentration of 1650 ppm, assuming a straight dilution to the SFP overflow limit and a feed and bleed operation thereafter with instantaneous complete mixing.

To demonstrate that sufficient time exists for plant personnel to identify and terminate a boron dilution event, the licensee provided a description of all alarms available to alert operators, and plant controls that will be implemented. There is no automatic level control system for the SFP; therefore, the SFP will overflow on an uncontrolled water addition. However, a high level alarm in the control room would alert personnel of a potential boron dilution event within 15 minutes for a 1000 gpm dilution rate. In addition to the SFP high level alarm, annunciator alarms for the FPS exist in the Control Room, which would alert operators to identify and terminate the worst-case boron dilution source. This means that there would be more than 3 additional hours before the critical boron concentration of 1650 ppm within the DSC is reached. The NRC staff finds that this is acceptable.

The CCNPP's SFP is a large rectangular structure filled with borated water that completely covers the spent fuel assemblies. A 3.5-foot wall divides the pool, with the north half associated to Unit 1 and the south half associated to Unit 2. A slot in the dividing wall has removable gates, which allow movement of the fuel assemblies between the two halves of the pool. The slot is normally open and the removable gate stored in the Unit 1 SFP close to the west end of the south wall. However, to ensure the applicability of the assumptions in its dilution and criticality evaluations, the licensee has committed to revise the fuel-handling procedure to include an initial condition that requires the slot between the two pools to be open and the gate to be stored in its proper storage location when a DSC is present in the Unit 1 SFP.

To ensure that operators are capable of identifying and terminating a boron dilution event during DSC loading, unloading, and handling operations, operator training will be conducted. During training activities operators will receive revised alarm manual procedures which verify that the SFP boron concentration is in compliance with the new ISFSI TS limit prior to the loading of a NUHOMS–32P® DSC.

Based on the NRC staff's review of the licensee's exemption request dated December 21, 2004, as supplemented on May 31, 2005, and its boron dilution analysis, the NRC staff finds that the licensee has provided sufficient information to demonstrate that an undetected and uncorrected dilution from the TS required boron concentration to the calculated critical boron concentration is very unlikely. Based on its review of the boron analysis and enhancements to the operating procedures and operator training program, the NRC staff finds the licensee has satisfied Criterion 5.

Therefore, in conjunction with the conservative assumptions used to establish the TS required boron concentration and critical boron concentration, the boron dilution evaluation demonstrates that the underlying intent of 10 CFR 50.68(b)(1) is satisfied.

3.3 Legal Basis for the Exemption

3.3.1 Authorized by Law

This exemption results in changes to the operation of the plant by allowing the operation of the new dry fuel storage facility and loading of the NUHOMS–32P® DSC. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. In addition, the granting of the licensee's exemption request will not result in a violation of the Atomic Energy Act of 1954, as amended, or the intent of the Commission's regulations. Therefore, the exemption is authorized by law.

3.3.2 No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.68(b)(1) is to ensure that adequate controls are in place to ensure that the handling and storage of fuel assemblies is conducted in a manner such that the fuel assemblies remain safely subcritical. Based on the NRC staff's review of the licensee's exemption request, the licensee has demonstrated that sufficient controls are in place to provide reasonable assurance that there is no undue risk to public health and safety given conservative assumptions in the criticality analysis (Criterion 1 above); surveillances periodically verify the boron concentration before and during loading and unloading (Criterion 2 above); radiation monitoring equipment is used to detect excessive radiation and initiate appropriate protective actions (Criterion 3 above); only fuel authorized by the ISFSI TS will be loaded and stored in the ISFSI (Criterion 4 above); and boron dilution events have been analyzed, and there are sufficient monitoring capabilities and time for the licensee to identify and terminate a dilution event prior to achieving a critical boron concentration in the cask (Criterion 5 above). Therefore, the NRC staff concluded that the underlying purpose of the rule has been satisfied and that there is no undue risk to public health and safety.

3.3.3 Consistent with Common Defense and Security

This exemption results in changes to the operation of the plant by allowing the operation of the new dry fuel storage facility and loading of the NUHOMS–32P® DSC. This change to the fuel assembly storage and handling in the plant does not affect the national defense strategy because the national defense is maintained by resources (hardware or software or other) that are outside the plant and that have no direct relation to plant operation. In addition, loading spent fuel into the NUHOMS–32P® DSC in the SFP does not affect the ability of the licensee to defend the plant against a terrorist attack. Therefore, the common defense and security is not impacted by this exemption request.

3.3.4 Special Circumstances

Pursuant to 10 CFR 50.12, ''Specific exemptions,'' the NRC staff reviewed the licensee's exemption request to determine if the legal basis for granting an exemption had been satisfied. With regards to the six special circumstances listed in 10 CFR 50.12(a)(2), the NRC staff finds that the licensee's exemption request satisfies 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.'' Specifically, the NRC staff concludes that since the licensee has satisfied the five criteria in Section 3.1 of this exemption, the application of the rule is not necessary to achieve its underlying purpose in this particular case.

3.4 Summary

Based upon the review of the licensee's exemption request to credit soluble boron during DSC loading, unloading, and handling in the CCNPP SFP, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2) the licensee's exemption request is acceptable. However, the NRC staff places the following limitations and/or conditions on the approval of this exemption:

1. This exemption is limited to the loading, unloading, and handling of the DSC for only the TN NUHOMS–32P® at CCNPP.

2. This exemption is limited to the loading, unloading, and handling in the DSC at CCNPP of Combustion Engineering 14x14 fuel assemblies that had maximum initial, unirradiated U–235 enrichments of 4.5 weight percent.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.68(b)(1) for the loading, unloading, and handling of the components of the Transnuclear NUHOMS–32P® dry cask storage system at CCNPP. However, since the licensee does not have an NRC-approved methodology for evaluating changes to the analyses or systems supporting this exemption request, the NRC staff's approval of the exemption is restricted to those specific design and operating conditions described in the licensee's December 21, 2004, exemption request. The licensee may not apply the 10 CFR 50.59 process for evaluating changes to specific exemptions. Any changes to the design or operation of (1) the dry cask storage system, (2) the SFP, (3) the fuel assemblies to be stored, (4) the boron dilution analyses, or (5) supporting procedures and controls, regardless of whether they are approved under the general Part 72 license or perceived to be conservative, will invalidate this exemption. Upon invalidation of the exemption, the licensee will be required to comply with NRC regulations prior to future cask loadings.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 51853).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of September, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18193 Filed 9–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its January 14, 2003, application for proposed amendment to Facility Operating License No. NPF–12 for the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, South Carolina.

The proposed amendment would have revised the Technical Specifications pertaining to emergency core cooling systems (ECCS); exclusion of safety injection pumps from the requirement to vent ECCS pumps.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 4, 2003 (68 FR 10281). However, by letter dated June 22, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 14, 2003, and the licensee's letter dated June 22, 2005, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 8th day of September, 2005.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18195 Filed 9–13–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant; Notice of Public Meeting To Obtain Comments on Request Regarding Proposed Release of Part of Site for Unrestricted Use

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting a meeting, pursuant to Section 50.83, ''Release of part of a power reactor facility or site for unrestricted use,'' of Part 50 of Title 10 of the Code of Federal Regulations (10 CFR), for purpose of obtaining comments from the public on the proposed release of part of the R.E. Ginna Nuclear Power Plant (Ginna Plant) site, located in Wayne County, New York.

DATES: The public meeting will be held on Wednesday, September 28, 2005, from 6 p.m. to 8 p.m. at the Ginna Plant Training Center, 1517 Lake Road Ontario, NY 14519.

Travel Information: From Rochester, take Interstate I–590 towards RT–590. Road name changes to SR–590. At exit 10B, take Ramp (Right) onto SR–104 towards RT–104/Webster. Turn LEFT (North) onto CR–102 (Lakeside Road). Turn RIGHT (East) onto CR–101 (Lake Road). Follow Lake Road to the Ginna Information Center.

Notification of Attendance: It is strongly encouraged that prospective participants contact NRC prior to the meeting to ensure adequate accommodations and to expedite the required visitor processing. Contact Shannine DiMora, telephone: (315) 524–6935; e-mail: *sjd1@nrc.gov,* and submit participant name and affiliated organization by September 23, 2005. Also, it is suggested that attendees limit the amount of personal items and electronic devices brought into the

building. Those needing accommodations under the Americans with Disabilities Act or having special concerns should contact Thomas Harding, Ginna LLC, in advance at (585) 771–3384.

SUPPLEMENTARY INFORMATION: The NRC has received, by letter dated May 20, 2005, an application filed by R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC) requesting the release of a part of the site for unrestricted use at its Ginna Plant. Before approving the proposed partial site release, the NRC will need to determine that the licensee has met the criteria set forth in Section 50.83 of 10 CFR Part 50. The tract of land proposed for release consists of two adjacent parcels, comprising a total of approximately 15 acres located along the western edge of the Ginna Plant site boundary, and is entirely outside of the Exclusion Area.

The NRC had previously provided notice in the **Federal Register** on July 11, 2005 (70 FR 39802) to individuals in the vicinity of the facility that the NRC was in receipt of a proposed request release of the part of the site and would accept written comments concerning this proposal by August 10, 2005. Furthermore, the NRC stated that, before acting upon this request, it would also conduct a public meeting in the vicinity of the Ginna Plant for the purpose of obtaining public comments. The NRC will consider and, if appropriate, respond to these written and verbal comments, but such comments will not otherwise constitute part of the decisional record. Comments received after the public meeting will be considered if practicable to do so, but only those comments received on or before the public meeting can be assured consideration.

Documents related to this action, including the application for approval and supporting documentation, are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will also be accessible electronically as text and image files from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. The PDR reproduction contractor will copy documents for a fee.

FOR FURTHER INFORMATION CONTACT: Patrick D. Milano, Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–1457; fax no: 301–415–2102; e-mail: *pdm@nrc.gov.*

Dated at Rockville, Maryland this 7th day of September, 2005.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18194 Filed 9–13–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27058; 812–12893]

Eaton Vance Senior Income Trust, et al.; Notice of Application

September 7, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies (''Investing Funds'') to use cash collateral received in connection with a securities lending program (''Cash Collateral'') to purchase shares of affiliated money market funds or an affiliated cash management vehicle that relies on section 3(c)(1) or 3(c)(7) of the Act.

APPLICANTS: Eaton Vance Senior Income Trust, Eaton Vance Floating-Rate Income Trust, Eaton Vance Short Duration Diversified Income Fund, Eaton Vance Enhanced Equity Income Fund, Eaton Vance Enhanced Equity Income Fund II, Eaton Vance California Municipal Income Trust, Eaton Vance Florida Municipal Income Trust, Eaton Vance Massachusetts Municipal Income Trust, Eaton Vance Michigan Municipal Income Trust, Eaton Vance Municipal Income Trust, Eaton Vance New Jersey Municipal Income Trust, Eaton Vance New York Municipal Income Trust, Eaton Vance Ohio Municipal Income Trust, Eaton Vance Pennsylvania Municipal Income Trust, Eaton Vance Advisers Senior Floating-Rate Fund, Eaton Vance Prime Rate Reserves, EV Classic Senior Floating-Rate Fund, Eaton Vance Institutional Senior Floating-Rate Fund, Eaton Vance Growth Trust, Eaton Vance Investment Trust, Eaton Vance Municipals Trust, Eaton Vance Municipals Trust II, Eaton Vance Mutual Funds Trust, Eaton Vance Series Trust, Eaton Vance Series Trust II, Eaton Vance Special Investment Trust, Eaton Vance Variable Trust, Growth Portfolio, Global Growth Portfolio, Cash Management Portfolio, Government Obligations Portfolio, High Income Portfolio, Tax-Managed Growth Portfolio, Strategic Income Portfolio, Large-Cap Value Portfolio, Special Equities Portfolio, Utilities Portfolio, Senior Debt Portfolio, Floating-Rate Portfolio, Tax-Managed Small-Cap Growth Portfolio, Tax-Managed International Equity Portfolio, Tax-Managed Value Portfolio, Boston Income Portfolio, Tax-Managed Multi-Cap Opportunity Portfolio, Tax-Managed Mid-Cap Core Portfolio, Investment Grade Income Portfolio, Small-Cap Portfolio, Large-Cap Growth Portfolio, Large-Cap Core Portfolio, Small-Cap Growth Portfolio, Tax-Managed Small-Cap Value Portfolio, Eaton Vance Limited Duration Income Fund, Investment Portfolio, Capital Growth Portfolio, Eaton Vance Insured California Municipal Bond Fund, Eaton Vance Insured California Municipal Bond Fund II, Eaton Vance Insured Florida Municipal Bond Fund, Eaton Vance Insured Massachusetts Municipal Bond Fund, Eaton Vance Insured Michigan Municipal Bond Fund, Eaton Vance Insured Municipal Bond Fund, Eaton Vance Insured Municipal Bond Fund II, Eaton Vance Tax-Managed Buy-Write Income Fund, Eaton Vance Insured New Jersey Municipal Bond Fund, Eaton Vance Insured New York Municipal Bond Fund, Eaton Vance Insured New York Municipal Bond Fund II, Eaton Vance Insured Ohio Municipal Bond Fund, Eaton Vance Insured Pennsylvania Municipal Bond Fund, Eaton Vance Senior Floating-Rate Trust, Eaton Vance Tax-Advantaged Dividend Income Fund, Eaton Vance Tax-Advantaged Global Dividend Income Fund, Eaton Vance Tax-Advantaged Global Dividend Opportunities Fund, on behalf of themselves or their series (each, a ''Fund,'' and collectively, the ''Funds'');

Eaton Vance Management (''EVM''), Boston Management & Research, Atlanta Capital Management Company, LLC, Fox Asset Management, Inc., and Parametric Portfolio Associates LLC (each, an ''Adviser'' and together with EVM, the ''Advisers'').

FILING DATES: The application was filed on October 4, 2002, and amended on September, 2, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 3, 2005, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, c/o Robert A. Wittie, Esq., Kirkpatrick & Lockhart, LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 551–6874, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. Each Investing Fund is registered under the Act as an open-end or closed-end management investment company and is organized as a business trust formed under the laws of Massachusetts or a trust formed under the laws of New York. Each Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. EVM is a direct wholly-owned subsidiary of Eaton Vance Corp. (''EV Corp.'') and Boston Management & Research is a direct wholly-owned subsidiary of EVM. Atlanta Capital Management Company, LLC, Fox Asset Management, Inc., and Parametric Portfolio Associates LLC each are indirect majority-owned subsidiaries of EV Corp. Each Investing Fund has entered into a management or advisory and service contract with one of the Advisers pursuant to which the Adviser provides investment management advice and manages the Investing Fund's business affairs.[1] Applicants request that the relief extend to any entity controlling, controlled by, or under common control with EVM (included in the term ''Adviser'') and any other registered management investment company or series thereof that is advised by an Adviser (included in the term ''Funds'').[2]

2. The Investing Funds have the ability to increase their income by lending portfolio securities to borrowers, such as registered broker-dealers or other institutional investors deemed by the Adviser to be of good credit standing, through a securities lending program (''Securities Lending Program''). Loans will be continuously secured by collateral, the value of which will range from between 100% and 105%, depending on the type of collateral posted and securities loaned, plus any interest accrued to date. Collateral will consist of cash and other types of instruments such as U.S. Government securities or irrevocable letters of credit. The Securities Lending Program, including the investment of any Cash Collateral, will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

3. Applicants request relief to permit: (a) Each Investing Fund to use its Cash Collateral to purchase shares of money market Funds that are in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Investing Fund and comply with rule 2a–7 under the Act (''Money Market Funds'') and a cash management vehicle that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act and is advised by an Adviser (''Private Fund,'' and together with the Money Market Funds, the ''Central Funds''), and the Central Funds to sell their respective shares to and to purchase (or redeem) such shares from the Investing Funds; and (b) the Advisers to effect such purchases and sales.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling any security of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit the Investing Funds to use Cash Collateral to purchase shares of the Money Market Funds in excess of the limits imposed by section 12(d)(1)(A), and each Money Market Fund, its principal underwriter, and any broker or dealer to sell the Money Market Fund's shares to the Investing Funds in excess of the limits in section 12(d)(1)(B). Applicants represent that the proposed transactions will not result in an inappropriate layering of fees because shares of the Central Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules''), or if such shares are subject to any such sales load, redemption fee, distribution fee, or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. For Cash Collateral Fee Investing Funds, before the next meeting of the board of trustees (''Board'') of a Cash Collateral Fee Investing Fund is held for

[1] Under their respective management or advisory contracts, certain closed-end Investing Funds will calculate their advisory fees on a gross assets basis, which includes Cash Collateral, to reflect investment leverage. These closed-end Investing Funds, and any other Investing Fund that calculates its advisory fee on a basis that includes Cash Collateral are referred to as the ''Cash Collateral Fee Investing Funds.''

[2] All entities that currently intend to rely on the requested relief have been named as applicants. Any entity that relies on the requested relief will do so only in accordance with the terms and conditions of the application.

the purpose of voting on an advisory contract with the Adviser under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or the portion of the advisory fee under the existing advisory contract with the Adviser attributable to, managing the Cash Collateral of the Cash Collateral Fee Investing Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract with the Adviser for a Cash Collateral Fee Investing Fund, the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), shall consider to what extent, if any, the advisory fees charged to the Cash Collateral Fee Investing Fund by the Adviser should be reduced to account for reduced services provided to the Cash Collateral Fee Investing Fund as a result of Cash Collateral being invested in the Central Funds. Applicants also represent that the Central Funds will not acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except that a Money Market Fund may acquire shares of another Money Market Fund in reliance on section 12(d)(1)(E) of the Act. Applicants further state that the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and, therefore, will not be susceptible to control through the threat of large scale redemptions. For these reasons, applicants believe that the proposed transactions will not give rise to the abuses that sections 12(d)(1)(A) and (B) under the Act were designed to prevent.

3. Sections 17(a)(1) and 17(a)(2) of the Act prohibit an affiliated person of a registered investment company, or any affiliated person of the affiliated person (''second-tier affiliate'') from selling any security to, or purchasing any security from, the registered investment company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser. Control is defined in section 2(a)(9) of the Act to mean ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.''

4. Applicants state that because the Advisers will serve as investment advisers of the Investing Funds and the Central Funds, the Advisers could be deemed to control the Investing Funds and the Central Funds, and the Advisers are under common control. Accordingly, the Investing Funds and the Central Funds may be deemed to be under common control and affiliated persons of each other. In addition, if an Investing Fund acquires 5% or more of the outstanding voting securities of a Central Fund, the Central Fund could be deemed an affiliated person of the Investing Fund. As a result, applicants state that the sale of shares of the Central Funds to the Investing Funds, and the redemption of such shares in connection with the investment of Cash Collateral may be prohibited under Section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investing Funds to use Cash Collateral to purchase shares of the Central Funds, and the Central Funds to sell their respective shares to and to purchase (or redeem) such shares from the Investing Funds. Applicants state that the Investing Funds will retain their ability to invest Cash Collateral directly in money market instruments as authorized by their respective investment objectives and policies if they can achieve a higher return or for any other reason. Applicants state that the Investing Funds will invest in the Central Funds on the same basis as any other holder of Central Fund shares. Applicants state that an Investing Fund will invest its Cash Collateral in a Central Fund only if the Central Fund has been approved for investment by the Investing Fund. For these reasons, applicants believe that the terms of the proposed transactions are reasonable and fair and are consistent with the general purposes of the Act as well as with the policy of each Investing Fund.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the participation of the registered investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

8. Applicants state that the Investing Funds, by purchasing shares of the Central Funds, the Advisers, by managing the assets of the Investing Funds invested in the Central Funds, and the Central Funds, by selling shares to and redeeming shares from the Investing Funds, could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d–1. Applicants request an order pursuant to rule 17d–1 under the Act to permit certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

9. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Investing Funds in shares of the Central Funds would be on the same basis and indistinguishable from any other shareholder account maintained by the Central Fund. Accordingly, applicants believe that the conditions for relief under rule 17d–1 under the Act are satisfied.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested

relief will be subject to the following conditions:

1. Before an Investing Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Investing Fund's participation in the Securities Lending Program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the shareholders of the Investing Fund.

2. Investment of Cash Collateral in shares of the Central Funds will be in accordance with each Investing Fund's respective investment restrictions and policies as recited in the Investing Fund's prospectus and statement of additional information. An Investing Fund will invest Cash Collateral in a Central Fund only if the Central Fund has been approved for investment by the Investing Fund.

3. The Central Funds shall not acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except that a Money Market Fund may acquire the shares of another Money Market Fund in reliance on section 12(d)(1)(E) of the Act.

4. Shares of the Central Funds sold to the Investing Funds either will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in Rule 2830(b)(9) of the NASD Conduct Rules) or, if such shares are subject to any such sales load, redemption fee, distribution fee, or service fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

5. Each Investing Fund will purchase and redeem shares of the Private Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Fund. A separate account will be established in the shareholder records of the Private Fund for the account of each Investing Fund.

6. The Private Fund will comply with sections 17(a), (d), and (e) and section 18 of the Act as if the Private Fund were a registered open-end investment company. With respect to all redemption requests made by an Investing Fund, the Private Fund will comply with section 22(e) of the Act. The Adviser, as sole trustee or managing member of the Private Fund, will adopt procedures designed to ensure that the Private Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. The Adviser to the Private Fund will periodically review and update, as appropriate, such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

7. The Private Fund will use the amortized cost method of valuation as defined in rule 2a–7 under the Act and will comply with rule 2a–7. The Adviser to the Private Fund will adopt and monitor the procedures described in rule 2a–7(c)(7) under the Act and will take such other actions as are required to be taken under those procedures. An Investing Fund may only purchase shares of the Private Fund if the Adviser determines on an ongoing basis that the Private Fund is in compliance with rule 2a–7 under the Act. The Adviser will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of the determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and the staff.

8. Each Investing Fund and each Central Fund that may rely on the order shall be advised by an Adviser. Each Investing Fund and Money Market Fund will be in the same group of investment companies as defined in section 12(d)(1)(G) of the Act.

9. Before the next meeting of the Board of a Cash Collateral Fee Investing Fund is held for the purpose of voting on an advisory contract with the Adviser under section 15 of the Act, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or the portion of the advisory fee under the existing advisory contract with the Adviser attributable to, managing the Cash Collateral of the Cash Collateral Fee Investing Fund that can be expected to be invested in the Central Funds. Before approving any advisory contract with the Adviser for a Cash Collateral Fee Investing Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Cash Collateral Fee Investing Fund by the Adviser should be reduced to account for reduced services provided to the Cash Collateral Fee Investing Fund as a result of Cash Collateral being invested in the Central Funds. In addition, the Cash Collateral Fee Investing Fund's minute books will record fully the Board's consideration in approving the advisory contract with the Adviser, including the considerations relating to fees referred to above.

10. The Board of any Investing Fund will satisfy the fund governance standards as defined in Rule 0–1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5005 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–03788]

Issuer Delisting; Notice of Application of N.V. Koninklijke Nederlandsche Petroleum Maatschappij (English Translation, Royal Dutch Petroleum Company) To Withdraw Its Ordinary Shares, Par Value 0.56 Euro, From Listing and Registration on the New York Stock Exchange, Inc.

September 7, 2005.

On August 10, 2005, N.V. Koninklijke Nederlandsche Petroleum Maatschappij (English translation, Royal Dutch Petroleum Company), a company organized pursuant to the laws of the Netherlands (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission'') pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its ordinary shares, par value 0.56 euro (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'').

On August 5, 2005, a delegate committee of the Board of Management (''Committee'') of the Issuer approved resolutions to withdraw the Security from listing on NYSE. The Committee stated that the following reasons factored into its decision to withdraw the Security from NYSE. First, the Committee considered that in approving

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

the unification transaction between the Issuer and The ''Shell'' Transport and Trading Company, p.l.c., and recommending the public exchange offer (''Offer'') by Royal Dutch Shell, plc (''Royal Dutch Shell'') it was understood that following completion of the Offer that expired on July 18, 2005 and depending on the level of acceptance, Royal Dutch Shell intended to request the Issuer to seek delisting of its shares. It was noted that the Offer documents in relation to the unification transaction contemplated that Royal Dutch Shell would request such delisting. Second, the Committee also considered the likely effects of delisting described in the Offer documentation, including reduced liquidity and the fact that the Security in New York registry form might no longer constitute ''margin securities.'' Third, the Chairman of the Committee informed the Committee that this forecast regarding reduced liquidity has proved accurate: trading volumes in the Security have decreased on Euronext Amsterdam and NYSE after July 19, 2005. In this regard, the Committee considered that should interest exist in trading the Security, an over-the-counter market might offer an adequate market for trading the Security. Fourth, furthermore, the Committee considered that a liquid market has developed and is being maintained in shares in the Issuer's parent company, Royal Dutch Shell, on the London Stock Exchange, Euronext Amsterdam, and NYSE. The Committee considered that these listings required Royal Dutch Shell to comply with listing rules and corporate governance requirements, and therefore that delisting of the Security from Euronext Amsterdam and NYSE would not result in investors in the Shell Group of Companies, (''Shell Group'') no longer benefiting from such corporate governance requirements. The Committee also noted that the proposed delisting would not impair the ability of investors interested in acquiring an interest in the Shell Group to acquire such an interest. Fifth, the Committee also noted that Royal Dutch Shell has publicly reserved the right to use any legally permitted method to obtain 100% of the Security. Sixth, the Committee also considered the cost of the listing fees and administrative time and expense associated with maintaining listings. In view of the factors noted above, the Committee expressed its unanimous view that the benefits of the Issuer to delist the Security from both Euronext Amsterdam and NYSE outweigh any disadvantages of such delisting for the remaining minority shareholders.

The Issuer stated in its application that it has complied with the rules of NYSE by providing NYSE with the required documents governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before September 29, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–03788 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–03788. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5004 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28026]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 8, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 3, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 3, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corp., et al. (70–10078)

Ameren Corporation (''Ameren''), a registered holding company, 1901 Chouteau Avenue, St. Louis, Missouri 63103, CILCORP Inc. (''CILCORP''), a wholly owned exempt holding company subsidiary of Ameren, AmernEnergy Resources Generating Company (''AERG''), a wholly owned indirect electric utility company subsidiary of Ameren, and CILCORP Investment

Management, Inc. (''CIM'') a wholly owned direct nonutility subsidiary of CILCORP, all at 300 Liberty Street, Peoria, Illinois 61602, have filed an application-declaration under sections 6(a), 7, 9(a),10, 11(b)(1), 12(b) and 12(f) of the Act and rule 45 under the Act.

I. Background

A. The Ameren System

Ameren directly owns all of the issued and outstanding common stock of Union Electric Company, dba ''AmerenUE,'' Central Illinois Public Service Company, dba ''AmerenCIPS,'' and Illinois Power Company dba ''AmerenIP.'' Additionally, through CILCORP, Ameren owns all of the issued and outstanding common stock of Central Illinois Light Company, dba ''AmerenCILCO.'' AmerenCILCO also holds all of the outstanding common stock of AERG, an electric utility generating subsidiary to which AmerenCILCO transferred substantially all of its generating assets in October 2003. Together, AmerenUE, AmerenCIPS, AmerenIP and AmerenCILCO provide retail and wholesale electric service to approximately 2.3 million customers and retail natural gas service to approximately 935,000 customers in parts of Missouri and Illinois.

CIM holds investments in several leasing transactions, including those held through its wholly-owned subsidiaries: CIM Air Leasing, Inc. (''CIM Air''), CILCORP Lease Management Inc. (''CLM''), CIM Leasing, Inc. (''CIM Leasing'') and CIM Energy Investments, Inc. (''CIM Energy''). CIM also owns interests in the following partnerships: Midwest Corporate Tax Credit Fund, LP; Midwest Corporate Tax Credit Fund II, LP; Provident Tax Credit Fund III, LP; Illinois Equity Fund 1992 Limited Partnership; Illinois Equity Fund 1994 Limited Partnership; Illinois Equity Fund 1996 Limited Partnership; and Illinois Equity Fund 1998 Limited Partnership (collectively, ''Housing Credit Partnerships'').

B. Past Orders

By order dated January 29, 2003, (HCAR No. 27645, ''Initial Order''), the Commission authorized Ameren to acquire all of the issued and outstanding common stock of CILCORP. Ameren completed the acquisition of CILCORP on January 31, 2003. In the Initial Order, the Commission reserved jurisdiction over Ameren's retention of certain indirect non-utility subsidiaries and investments of CILCORP under section 11(b)(1) of the Act, including the following:

- CIM's 40% interest—held by CIM Air through a grantor trust—in Freighter Express Partners (''FEP''), which owns a commercial aircraft that is leased to an unrelated third party under an agreement dated as of October 1, 1993 and subject to non-recourse lease debt (''FEP Partnership Interest'').
- CIM's 100% interest—held by CIM Leasing through a grantor trust—in passenger railcars that are leased to an unrelated third party under an agreement dated as of September 1, 1993 and subject to non-recourse lease debt (''Railcars Interest'').
- CLM's 7.4257% interest—held through a grantor trust—in Unit No. 1 of the Springerville Power Plant, which is leased to an unrelated third party under an agreement dated December 15, 1986 and subject to non-recourse lease debt (''Power Plant Interest'').
- CLM's 49.9% interest—held by two wholly-owned subsidiaries, CLM Inc., IV (''CLM IV'') and CLM XII, Inc. (''CLM XII'')—in D.C.L. Leasing Partners Limited Partnership, Ltd.–IV (''DCL IV''), which owns an office building in California that is leased to an unrelated third party under an agreement dated November 10, 1982 and subject to a mortgage (the ''California Office Building Interest'').
- CLM's 49.9% interest in D.C.L. Leasing Partners Limited Partnership, Ltd.–VI (''DCL VI''), which owns an office building in Delaware that is leased to an unrelated third party under an agreement dated April 1, 1984 and subject to a mortgage (''Delaware Office Building Interest''). CLM XI, Inc. (''CLM XI'') and CLM Inc., VI (''CLM VI''), each a wholly owned subsidiary of CLM X, Inc. (''CLM X''), together own the Delaware Office Building Interest. CLM X is a wholly-owned subsidiary of CLM.
- CLM's 14.95016611% interest—held by CLM VI through a grantor trust—in a waste-to-energy electric generating facility that is leased to an unrelated third party under an agreement dated July 21, 1997 and subject to non-recourse lease debt (''Generation Facility Interest'').
- CLM's 50% interest—held by CLM Inc.—VII (''CLM VII'') and CLM Inc.—VIII (''CLM VIII''), each a wholly owned subsidiary of CLM, through a grantor trust—in 24 commercial real estate properties, each of which is leased to an unrelated third party under an agreement dated as of December 1, 1986 and subject to non-recourse lease debt (''Commercial Real Estate Interest'').

The Railcars Interest, the Power Plant Interest, and the Generation Facility Interest are referred to as the ''Equipment Interests;'' the FEP Partnership Interest, the California Office Building Interest, the Delaware Office Building Interest, and the Commercial Real Estate Interest are referred to as the ''Non-Equipment Interests;'' the Equipment Interests and the Non-Equipment Interests are together referred to as the ''Lease Interests.''

By order dated April 15, 2004, (HCAR No. 27835, ''Supplemental Order''), the Commission determined that certain nonutility interests and investments—referred to as the ''Non-Retainable Interests''—of CILCORP, including the Lease Interests described above, are not retainable by Ameren under the standards of section 11(b)(1) of the Act. The Supplemental Order requires that Ameren cause CIM or any subsidiary to sell or otherwise dispose of the Non-Retainable Interests not later than January 31, 2006. Ameren committed that, within 24 months of receipt, it would either: (1) Expend the net proceeds from any sale or disposition of a Non-Retainable Interest to either retire or cancel securities representing indebtedness of the transferor or otherwise purchase property other than ''nonexempt property'' within the meaning of section 1083 of the Internal Revenue Code of 1986, as amended (''Code''); or (2) invest such amount as a contribution to the capital, or as paid-in surplus, of another direct or indirect subsidiary of Ameren in a manner that satisfies the non-recognition provisions of Code section 1081.

C. Summary of Relevant Provisions of the Code

Code section 1081(b)(1) provides for the non-recognition of gain or loss from a sale or exchange of property made to comply with a Commission order. Code section 1082(a)(2) requires that any unrecognized gain under Code section 1081(b)(1) be applied to reduce the basis of the transferor's remaining assets in a specified manner.

An exception from this non-recognition treatment exists under Code section 1081(b)(1) where certain ''nonexempt property'' is received by the transferor. If any ''nonexempt property'' is received,[1] the gain must be recognized unless, within 24 months of the transfer, the ''nonexempt property'' is expended for property other than ''nonexempt property'' or invested in accordance with Code section 1081(b)(2) and the Commission's order recites that

[1] Under section 1083(e) of the Code, ''nonexempt property'' is defined to include, among other things, cash indebtedness of the transferor that is cancelled or assumed by the purchaser in the exchange.

such expenditure or investment is necessary or appropriate to the integration or simplification of the transferor's holding company system. Code section 1081(b)(3) provides that an appropriate expenditure for property other than ''nonexempt property'' for purposes of Code section 1081(b)(2) includes each of: (1) A payment in complete or partial retirement or cancellation of securities representing indebtedness of the transferor; and (2) the amount of any liability of the transferor that is assumed (or to which transferred property is subject) in connection with any transfer of property in obedience to a Commission order.

Code section 1081(d) provides for the non-recognition of gain or loss from certain inter-company transactions within the same system group if such transactions are effected to comply with a Commission order.

D. Sale of the Lease Interests

CILCORP states that it intends to enter into one or more definitive agreements to sell all of the Lease Interests. The sale of the Lease Interests would result in a significant amount of gain for Federal income tax purposes. Ameren would structure the sale transaction(s) in a manner that would enable it to utilize the non-recognition provisions of Code section 1081, as contemplated by the Supplemental Order. To achieve this result, Ameren would cause CILCORP, CIM, and certain of its other direct and indirect subsidiaries (as described below) to engage in a series of essentially simultaneous inter-company transactions the purposes of which would be: (1) To transfer certain investments of CIM that are not among the Non-Retainable Interests (and are thus not part of the assets being sold) to other direct or indirect subsidiaries of Ameren; and (2) to structure the sale(s) of the Lease Interests to occur from a subsidiary or subsidiaries of Ameren with sufficient tax basis in similar classes of property to absorb the basis reductions required by Code section 1082(b).

More specifically, to comply with the Supplemental Order, Ameren and its subsidiaries intend to engage in the following transactions (collectively, ''Proposed Transactions''):

1. On or prior to the earliest closing date with respect to the sale(s) of any or all of the Lease Interests (''Closing Date''), Ameren Energy Resources Company (''Resources''), an intermediate subsidiary that is owned directly by Ameren, would contribute the stock of certain of its direct nonutility subsidiaries to Ameren Energy Development Company (''Development''),[2] which is also a direct wholly-owned nonutility subsidiary of Resources.

2. On or prior to the Closing Date: (a) CIM would distribute the stock of CIM Energy to CILCORP; (b) CIM would transfer its interests in the Housing Credit Partnerships to an affiliated entity by a combination of distributions and contributions; and (c) CIM Leasing would transfer its interest in SunAmerica 51 to an affiliated entity by a combination of distributions and contributions.

3. On or prior to the Closing Date, CLM VI would distribute the Generation Facility Interest to CLM X, and CLM X would distribute the Generation Facility Interest to CLM. On or prior to the Closing Date, CLM would distribute the Power Plant Interest and the Generation Facility Interest to CIM, and CIM would contribute the Power Plant Interest and the Generation Facility Interest to CIM Leasing.

4. On or prior to the Closing Date, CIM would transfer the stock of CIM Leasing to AERG in exchange for a promissory note (''AERG Note'') and possibly cash (together with the AERG Note, ''AERG Consideration'').

5. On or prior to the Closing Date, CIM would distribute the AERG Consideration to CILCORP.

6. On or prior to the Closing Date, CILCORP would transfer the stock of CIM to Resources in exchange for a promissory note (''Resources Note'') and possibly cash (together with the Resources Note, ''Resources Consideration'').

7. On or prior to the Closing Date, Ameren would cause each of CIM Air, CLM, CIM Leasing, CLM IV, CLM VI, CLM VII, CLM VIII, CLM X, CLM XI, and CLM XII to convert into Delaware limited liability companies and would cause CIM to convert into an Illinois limited liability company.[3]

8. On the closing date with respect to the applicable Lease Interests, AERG would sell the CIM Leasing membership interest and/or any of the Equipment Interests to a buyer or buyers, in each case in exchange for cash, which would be treated for federal income tax purposes as a deemed sale of the Equipment Interests.

9. On the closing date with respect to the applicable Lease Interests, Resources would sell the CIM membership interest and/or any of the Non-Equipment Interests to a buyer or buyers, in each case in exchange for cash, which would be treated for federal income tax purposes as a deemed sale of the Non-Equipment Interests.

10. On the closing date with respect to the applicable Lease Interests, or within 24 months after that date, AERG would expend the cash received from the buyer(s) to reduce the AERG Note or would otherwise expend or invest such cash in accordance with Code section 1081(b).

11. On the closing date with respect to the applicable Lease Interests, or within 24 months after that date, Resources would expend the cash received from the buyer(s) to reduce the Resources Note.[4]

Applicants state that the Proposed Transactions are intended in part to allow Ameren to match the unrecognized gain from the sale of the Lease Interests under Code section 1081(b) to certain subsidiaries of Ameren that have a sufficiently high tax basis in other similar classes of property so that the unrecognized gain can be fully absorbed by the basis reductions required by Code section 1082(a)(2).[5]

II. Requests for Authority

Applicants request that the Commission modify the Supplemental Order to eliminate the deadline (January 31, 2006) by which Ameren must complete the sale or other disposition of the Non-Retainable Interests.

Applicants request authority for: (1) AERG to issue the AERG Note (in consideration for the stock of CIM Leasing); (2) CIM to acquire the AERG Note; and (3) AERG to acquire of the stock of CIM Leasing.

In addition, in accordance with Code section 1081(f) and the Supplemental Order, Ameren requests that the Commission issue a further supplemental order in this proceeding confirming that: (1) The proposed disposition of the Lease Interests through the Proposed Transactions would be a disposition for cash or cash equivalents in compliance with the Supplemental Order; (2) the application of the net proceeds to retire all or part of the AERG Note and the Resources Note would be a complete or partial retirement of securities representing indebtedness of AERG and Resources; (3) the amount of liabilities assumed and the amount of liabilities to which transferred property is subject upon the disposition of the Lease Interests through the Proposed Transactions

[2] Resources would contribute to Development the stock that it holds in Illinois Materials Supply Co., Ameren Energy Marketing Company, and Ameren Energy Fuels and Services Company, which are ''energy-related companies'' under rule 58, and Electric Energy, Inc. and AmerenEnergy Medina Valley Cogen (No. 4), which are ''exempt wholesale generators'' under section 32 of the Act. By order dated December 18, 2003 (HCAR No. 27777, ''December 2003 Order''), the Commission authorized Ameren to reorganize its ownership interest in exempt and nonexempt nonutility subsidiaries under intermediate subsidiaries.

[3] By the December 2003 Order, the Commission authorized Ameren to convert its nonutility subsidiaries from one business form to another.

[4] Applicants expect that the AERG Note and the Resources Note would be retired on or shortly after the latest applicable closing date.

[5] Ameren has requested that the Internal Revenue Service issue a private letter ruling confirming the federal income tax consequences of the Proposed Transactions. Applicants state that it is possible that the Internal Revenue Service may require Ameren to modify the Proposed Transactions to obtain the private letter ruling. The Proposed Transactions would include any IRS-required modification, to the extent the modification allows Ameren to comply with the Supplemental Order and is otherwise acceptable to Ameren.

would be an expenditure for property other than ''nonexempt property'' in compliance with the Supplemental Order; and (4) accordingly, each of the Proposed Transactions is necessary or appropriate to the integration or simplification of the Ameren holding company system and would effectuate the provisions of section 11(b)(1) of the Act, , and will be made in obedience to the supplemental order and the further supplemental order in this proceeding.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5013 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52375; File No. SR–CHX–2005–21]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Requiring Its Participants To Provide Electronic Mail Addresses to the Exchange

September 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX. On August 30, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On September 1, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made several minor clarifications to the proposed rule change, including changes to the proposed rule text to require members to promptly update electronic mail addresses they provide to the Exchange, to clarify that the proposal will not supersede or modify any other provisions of Exchange rules that set out a specific method for the receipt of information from the Exchange, and to modify Part II.A.1 to more closely conform it to the text of the proposed rule change.

[4] In Amendment No. 2, the Exchange changed the text of the proposed rule so that it uses the term ''electronic mail'' instead of the term ''e-mail.''

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the text of its proposed new Rule 17, in Article III of the Exchange's Rules, which would require participants and participant firms to provide electronic mail addresses to the Exchange for use in transmitting notices and other communications. Specifically, the Exchange proposes to (1) amend the text to require that participants and participant firms promptly update any electronic mail addresses provided to the Exchange when the addresses change or are no longer valid; and (2) amend the text to confirm that the proposal does not supersede or modify, in addition to specific provisions relating to the service of process or other materials in disciplinary proceedings, any other provisions of Exchange rules that set out a specific method for the receipt of information from the Exchange. The text of this proposed rule is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules_htm* and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 recently submitted a proposal to add a new Rule 17 to Article III of the Exchange's Rules to require each participant and participant firm to provide the Exchange with an electronic mail address that the Exchange may use to distribute notices and communications. The proposal is designed to allow the Exchange to take advantage of technology to communicate with participants in a more efficient and cost-effective manner, for routine communications as well as in appropriate emergency situations. Among other things, the Exchange anticipates that it would be able to provide participants with electronic copies of the weekly bulletin, which today are mailed to many of the Exchange's participants in hard copies.

Importantly, the original version of the Exchange's proposed rule change specifically noted that it does not modify or supersede any rule that sets out a different method of service required as part of a disciplinary proceeding. Those materials would continue to be provided by the more conventional means set out in the rules.[5] The Exchange now proposes to amend the proposed rule text to (1) require participants and participant firms to promptly update any electronic mail addresses provided to the Exchange when the addresses change or are no longer valid; and (2) confirm that the proposal does not supersede or modify any other provisions of Exchange rules that set out a specific method for the receipt of information from the Exchange.

2. Statutory Basis

The CHX believes the proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest by allowing the Exchange to take advantage of available technology to communicate with its participants in a more efficient and cost-effective manner.

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 Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[5] *See* Article XII (''Discipline and Trial Proceedings'').

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CHX–2005–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2005–21. 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 will also 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 No. SR–CHX–2005–21 and should be submitted on or before October 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5006 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52394; File No. SR–NSCC–2005–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Interpretation of the Definition of ''Insurance Company'' Under Its Rules and Procedures

September 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 17, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an interpretation of the definition of ''Insurance Company'' under NSCC's rules and procedures in the context of insurance company applicants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under NSCC's rules, ''Insurance Company'' is defined as ''any company, partnership, limited liability corporation or other organization or entity who is subject to supervision or regulation pursuant to the provisions of state insurance law and issues insurance contracts.'' NSCC's rules do not define the term ''state'' in this context.

The Fixed Income Clearing Corporation (''FICC'') Rules incorporate the definition of ''insurance company'' used in the Investment Company Act of 1940, as amended (''1940 Act'').[3] Both the Act and the 1940 Act define a ''State'' to mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. As a result, an insurance company organized and supervised, for example, in the District of Columbia, would constitute an Insurance Company under the 1940 Act and FICC's rules.

Accordingly, consistent with the definition used by FICC, NSCC has determined it is appropriate with regard to NSCC membership applicants that are insurance companies to interpret the term ''state'' under its rules within the context of insurance company admission standards, as including any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

The proposed change is consistent with Section 17A of the Act[4] and the rules and regulations thereunder applicable to NSCC because it will clarify NSCC's rules and procedures with regard to categorizing applicants for membership. By eliminating a potential misinterpretation of its membership requirements, NSCC believes that it will thereby provide enhanced protections to NSCC and its members and will assist NSCC in assuring the safeguarding of funds and securities in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[3] 15 U.S.C. 80a–1.

[4] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act [5] and Rule 19b–4(f)(1) [6] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–11 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–NSCC–2005–11. 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 NSCC and on NSCC's Web site at *http://www.nscc.com.* 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–NSCC–2005–11 and should be submitted on or before October 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5009 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52397; File No. SR–NSCC–2005–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Automated Customer Account Transfer Service Rules and Procedures

September 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 23, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change modifies NSCC's Automated Customer Account Transfer Service (''ACATS'') Rules and Procedures by eliminating the provision that allows delivering members to initiate the transfer of a custody redelivery position purchased by the delivering member for the benefit of a customer's account to a receiving member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the rule change and discussed any comments it received on the rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's ACATS enables members to transfer accounts of their customers between themselves on an automated basis. Currently, NSCC's Rule 50 provides that delivering members may, among other things, initiate the transfer of a custody redelivery position purchased by a delivering member for the benefit of a customer's account to a receiving member. While other features of delivering member initiated partial account transfers are utilized by members, this custody redelivery function is substantially unused. Accordingly, NSCC is deleting this function and removing reference to it from Rule 50.

NSCC believes the rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder applicable to NSCC because it eliminates a substantially unused feature of ACATS and as such, NSCC believes it is a change to an existing service that will not adversely affect the safeguarding of securities and funds in NSCC's custody or control and will not significantly affect the respective rights or obligations of NSCC or its participants.

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the rule change will have an impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f) [5] thereunder because it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible. At any time within sixty days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2005–12 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–NSCC–2005–12. 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 rule change that are filed with the Commission, and all written communications relating to the 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com.* 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–NSCC–2005–12 and should be submitted on or before October 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5010 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52391; File No. SR–NYSE–2004–47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Rule 352 Concerning Guarantees and Sharing in Accounts

September 7, 2005.

I. Introduction

On August 14, 2004, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule relating to amendments to Rule 352 concerning guarantees and sharing in accounts. On July 6, 2005, the Exchange filed Amendment No. 1 to its proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 5, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Background

Rule 352 (the ''Rule'') generally prohibits members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer. The amendments proposed herein expand the Rule to include specific limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other. In addition, the amendments integrate the Rule's Interpretation into the proposed Rule text, and otherwise clarify both the Rule's scope and purpose.

Loan Arrangements Between Registered Personnel and Customers

The Exchange does not currently have a rule that specifically addresses the issue of loan arrangements between member organization personnel and customers; however, the Exchange believes that such arrangements, given their inherent potential for conflict of interest and abuse, are generally not a good business practice. Bearing this concern in mind, it is recognized that there are certain situations when such loans may be appropriate. Accordingly, proposed paragraphs (e) and (f) to Rule 352 would limit loan arrangements, between persons associated with a member organization in any registered capacity and customers, to certain prescribed situations. As outlined in detail below, proposed Rule 352(e) requires written supervisory procedures that would limit loan arrangements between registered member organization personnel and customers of the member organization to those arising either in the context of a prescribed personal or business relationship outside of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52179 (July 29, 2005), 70 FR 45461 (August 5, 2005).

broker-customer relationship, or to those involving other registered personnel of the member organization. Proposed Rule 352(f) further requires detailed written supervisory procedures that would require that certain loan arrangements between registered member organization personnel and customers of the member organization be disclosed to the member organization for prior approval.

Limitations on Loan Arrangements

Proposed Rule 352(e) would permit a person associated with a member organization in any registered capacity to borrow money from or lend money to a customer of such person only if: (A) The member organization has written supervisory procedures permitting the borrowing and lending of money between such registered persons and their customers; and (B) the lending or borrowing arrangement meets one of the following conditions: (1) The customer is a member of such registered person's immediate family; or (2) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; or (3) the customer and the registered person are both registered persons of the same member organization; or (4) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker/customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

Loan Procedures

Proposed Rule 352(f)(1) would require member organizations to pre-approve, in writing, the lending or borrowing arrangements described in proposed paragraphs (e)(3) (between registered persons of the same member organization); (e)(4) (involving a personal relationship outside the context of the broker-customer relationship); and (e)(5) (involving a business relationship outside the context of the broker-customer relationship).

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(1) between a person associated with a member organization in any registered capacity and a customer that is a member of such registered person's immediate family, proposed paragraph (f)(2) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive member organization approval either prior to or subsequent to entering into a lending or borrowing arrangement with an immediate family member. For purposes of this proposed rule, the term ''immediate family'' is defined in proposed paragraph 352(g) to include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and would also include any other person whom the registered person supports, directly or indirectly, to a material extent.

With respect to the lending or borrowing arrangements described in proposed Rule 352(e)(2) between a person associated with a member organization in any registered capacity and a customer that is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business, proposed paragraph (f)(3) would permit a member organization's written procedures to indicate that registered persons are not required to notify the member organization or receive approval either prior to or subsequent to entering into a lending or borrowing arrangements with a customer that is a prescribed financial institution, provided that the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. For purposes of proposed paragraph (e)(2), a member organization may rely on the registered person's written representation that the terms of the loan meet the standards required by proposed paragraph (f)(3).

Integration of the Rule's Interpretation

The NYSE Interpretation Handbook contains an exception to the general prohibition, under current Rule 352(c), against sharing or agreeing to share in any profits or losses in any customer's account or from any transaction transacted therein.[4] The Interpretation states, in part, that: ''* * * where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with Section 205(1) and the rules thereunder, the arrangement will not be deemed violative of Rule 352(c) if the arrangement arises in the context of such member organization's advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.''

Since this exemption for member organizations acting in the capacity of a registered investment adviser is not referred to nor reasonably implied by the Rule, it is proposed that it be deleted in its entirety from the Interpretation Handbook, and integrated into the proposed Rule text.[5]

In addition, the Interpretation text reference to Section 205(1) of the Investment Advisers Act of 1940 is inaccurate. It is proposed that the reference be corrected to read ''Section 205 * * * unless exempt pursuant to Section 203(b) of the Advisers Act.''[6] The proposed change simply clarifies the scope and original intent of the reference, and does not alter the substance of the Interpretation.

Miscellaneous Rule Text Clarifications

The Exchange has taken this opportunity to rearrange and clarify certain sections of the Rule. For example, the text of Rule 352(b) arguably suggests an application of the Rule to a category broader than that of ''customers'' (*e.g.*, encompassing broker-dealers). Specifically, it states that ''no member, allied member, registered representative or officer shall guarantee or in any way represent that either he or his employer will guarantee any customer against loss in *any* account or on *any* transaction'' (italics added). It is proposed that this text be amended to specify ''customer'' accounts and ''customer'' transactions in order to remove any suggestion that proposed Rule 352 is to be construed more expansively than other NYSE sales practice rules. These proposed amendments are consistent with both the original intent of the Rule and the Exchange's ongoing interpretation of it.

It is proposed that the text of Rule 352(c) be amended, as reflected in proposed Rule 352(b), to clarify that its general restriction against receiving or agreeing to receive a share in the profits or losses of any customer account extends to officers of a member organization who are acting in the capacity of a registered representative.

[4] *See* text of the proposed rule change which is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[5] *Id.*

[6] *Id.*

Inclusion of the term ''officer'' also makes proposed paragraph (b) consistent with proposed paragraph (a).

Current Rule 352 paragraphs (a) and (b) have been combined into proposed paragraph (a). Further, the exceptions to the general prohibition against sharing in profits and losses which are currently in paragraphs .10 and .20 of the Rule's Supplemental Material have been clarified and relocated to proposed paragraph 352(c) under the heading ''Joint Accounts and Order Errors.''

Additional amendments are non-substantive changes, such as the clarification of rule text and the revision of dated language to reflect current usage.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) [7] of the Exchange Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, is designed to accomplish these ends (1) by placing limitations on loan arrangements between personnel associated with a member organization in any registered capacity on the one hand, and customers on the other, (2) by integrating the Rule's Interpretation into the proposed Rule, and (3) by clarifying both the Rule's scope and purpose with respect to prohibiting members, member organizations, and specified associated persons of such from entering into arrangements that guarantee the payment of a debit balance in any customer account; guarantee a customer against loss; or establish a profit and/or loss-sharing agreement with a customer.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2004–47), as amended, be, and hereby is, approved.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5007 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52386; File No. SR–NYSE–2005–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Interpretation of NYSE Rule 311 (''Formation and Approval of Member Organizations'') Codifying Certain Qualification Requirements for Criteria for Dual- or Multi-Designation of Principal Executive Officers

September 7, 2005.

On January 6, 2005, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 311 to codify certain qualification requirements for principal executive officers, Chief Financial Officers (''CFOs'') and Chief Operations Officers (''COOs'') and to state when an individual may serve in two or more of these roles. On July 25, 2005, the NYSE amended the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on August 5, 2005.[3] The Commission received no comment letters on the proposal.

The proposed rule change would amend NYSE Rule 311 to codify: (i) Qualification requirements for COOs and CFOs; (ii) criteria for the dual-designation of introducing firm COOs and CFOs; (iii) criteria for other dual designation and multi-designation of principal executive officer functions; (iv) criteria for co-designation of such functions; and (v) limitations on the employment of principal executive officers.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act,[5] which states that an Exchange may prescribe standards of training, experience and competence for persons associated with Exchange members and may bar a natural person from becoming a member or person associated with a member if such standards are not met. The Commission believes that by codifying and clarifying the Exchange's policies, the proposed amendments should provide Exchange members or persons associated with Exchange members, guidance on the Exchange's requirements for designation of principal executive officers. The Commission notes that the requirement contained in Interpretation of NYSE Rule 311(b)(5) Section /03 for prompt notification to the Exchange, and in Interpretation of NYSE Rule 311(b)(5) Sections /04, /05 and /06 for prior written approval of the Exchange will enable the Exchange to monitor the decisions of member organizations to ensure that they are appropriately tailored to meet the needs of each organization as well as the qualification requirements of the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NYSE–2005–04), as amended, be and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5008 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52181 (August 1, 2005), 70 FR 45459.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(c)(3)(B).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52396; File No. SR-NYSE–2005–55]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Deletion of Superseded Corporate Governance Standards (Sections 303.00, 303.01, and 303.02 of the Listed Company Manual)

September 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 19, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to delete Sections 303.00, 303.01, and 303.02 of the Listed Company Manual (''LCM'') in their entirety because these sections were completely superseded by Section 303A of the LCM as of July 31, 2005. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 4, 2003, the SEC approved LCM Section 303A which provides a new set of corporate governance listing standards for listed companies.[5] As adopted, Section 303A.00 established a transition period to provide companies with a reasonable timeframe within which to comply with the new requirements. During this transition period, listed companies were required to continue to comply with Sections 303.00, 303.01, and 303.02 of the LCM, to the extent that they were not yet required to comply with Section 303A. Listed companies were required to comply fully with the applicable requirements of Section 303A by October 31, 2004, except that foreign private issuers were given until July 31, 2005 to comply with the new audit committee standards of Section 303A.06. As of July 31, 2005, all listed companies are now required to fully comply with Section 303A. As such, Sections 303.00, 303.01, and 303.02 have no further application and, to avoid confusion, the Exchange proposes to delete them from the LCM in their entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder.[9] As required under Rule 19b-4(f)(6)(iii) under the Act,[10] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b-4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to remove Sections 303.00, 303.01, and 303.02 of the LCM as quickly as possible and prevent any potential confusion as to the applicability of these sections. For the reasons stated above, the Commission therefore designates the proposal to become operative immediately.[13]

At any time within 60 days of the filing of the proposed rule change, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR-NYSE–2002–33).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *Id.*

[13] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-NYSE–2005–55 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-NYSE–2005–55. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE–2005–55 and should be submitted on or before October 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5012 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52390; File No. SR–PCX–2005–103]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Obligations of Lead Market Makers

September 7, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which render the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend PCX Rule 6.82(c)(15) to change the operative date of the rule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.pacificex.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend PCX Rule 6.82(c)(15), Obligations of Lead Market Makers, to change the operative date of the rule to January 1, 2006. This date allows the Exchange to implement the technology to automate the routing out over linkage of public customer orders, which will facilitate Lead Market Maker compliance with the rule

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, because the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A). At the request of the Exchange, the Commission staff has added the

Continued

19b–4 thereunder,[8] because it is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR-PCX–2005–103 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-PCX–2005–103. 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-PCX–2005–103 and should be submitted on or before October 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5011 Filed 9–13–05; 8:45 am]

BILLING CODE 8010–01–P

reference to subparagraph (A) in the reference to Section 19(b)(3)(A). Telephone conversation between Alden Adkins, Chief Regulatory Officer, Exchange, and Kim Allen, Attorney, Division of Market Regulation (''Division''), Commission, on September 7, 2005

[8] 17 CFR 240.19b–4(f). At the request of the Exchange, the Commission staff has changed the reference from subparagraph (e) to paragraph (f) of Rule 19b–4. Telephone conversation between Alden Adkins, Chief Regulatory Officer, Exchange, and Kim Allen, Attorney, Division, Commission, on September 7, 2005.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10190]

Kansas Disaster # KS–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA—1600—DR) dated 8/23/2005.

Incident: Severe storms and flooding.

Incident Period: 6/30/2005 through 7/1/2005.

Effective Date: 8/23/2005.

Physical Loan Application Deadline Date: 10/24/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 8/23/2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Cherokee, Crawford, Neosho.

The Interest Rates are:

	Percent
Other (Including Non-profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10190.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–18202 Filed 9–13–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10189]

Louisiana Disaster # LA–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–1601–DR), dated 08/23/2005.

Incident: Tropical Storm Cindy.

Incident Period: 07/05/2005 through 07/06/2005.

Effective Date: 08/23/2005.

Physical Loan Application Deadline Date: 10/24/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/23/2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes:
Jefferson, Lafourche, Plaquemines, St. Bernard, St. Charles.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is #10189.

(Catalog of Federal Domestic Assistance Number 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–18203 Filed 9–13–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10178 and #10179]

Mississippi Disaster Number MS–00005

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1604–DR), dated 8/29/2005.

Incident: Hurricane Katrina.

Incident Period: 8/29/2005 and continuing.

Effective Date: 9/6/2005.

Physical Loan Application Deadline Date: 10/28/2005.

EIDL Loan Application Deadline Date: 5/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Mississippi, dated 8/29/2005, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties

ADAMS
ATTALA
CLAIBORNE
CHOCTAW
CLARKE
COPIAH
COVINGTON
FRANKLIN
HINDS
JASPER
JEFFERSON
JEFFERSON DAVIS
JONES
KEMPER
LAUDERDALE
LAWRENCE
LEAKE
LINCOLN
LOWNDES
MADISON
NESHOBA
NEWTON
NOXUBEE
OKTIBBEHA
RANKIN
SCOTT
SIMPSON
SMITH
WARREN
WAYNE
WINSTON
YAZOO

Contiguous Counties

MISSISSIPPI
CARROLL
CLAY
HOLMES
HUMPHREYS
ISSAQUENA
MONROE
MONTGOMERY
SHARKEY
WEBSTER
ALABAMA
CHOCTAW
LAMAR
PICKENS
SUMTER
LOUISIANA
EAST CARROLL
MADISON
TENSAS

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 05–18201 Filed 9–13–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, the staff of the U.S. Small Business Administration, or interested others. The conference will be held on Tuesday, September 27, 2005 at 1 p.m. eastern standard time.

Anyone wishing to participate or make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–18200 Filed 9–13–05; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is requesting written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The Subcommittee will consider these comments in developing recommendations on AGOA country eligibility for the President. Comments received related to the child labor criteria may also be considered by the Secretary of Labor for the preparation of the Department of Labor's report on child labor as required under section 412(c) of the Trade and Development Act of 2000. This notice identifies the eligibility criteria that must be considered under AGOA, and lists those sub-Saharan African countries that are currently eligible for the benefits of the AGOA, and those that are currently ineligible for such benefits.

DATES: Public comments are due at the Office of the U.S. Trade Representative

(USTR) by noon, Friday, October 14, 2005.

ADDRESSES: Submission by electronic mail: *FR0525@ustr.eop.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. See requirements for submissions below.

FOR FURTHER INFORMATION CONTACT: For procedural questions, please contact Gloria Blue, Office of the U.S. Trade Representative, 600 17th Street, NW., Room F516, Washington, DC, 20508, at (202) 395–3475. All other questions should be directed to Constance Hamilton, Deputy Assistant U.S. Trade Representative for Africa, Office of the U.S. Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200) (19 U.S.C. 3721 *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiary sub-Saharan African countries eligible for duty-free treatment for certain additional products under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (the ''1974 Act'')), as well as for the preferential treatment the AGOA provides for certain textile and apparel articles.

The President may designate a country as a beneficiary sub-Saharan African country eligible for both the additional GSP benefits and the textile and apparel benefits of the AGOA (if the country also meets certain statutory requirements intended to prevent unlawful transshipment of such articles) if he determines that the country meets the eligibility criteria set forth in: (1) Section 104 of the AGOA; and (2) section 502 of the 1974 Act. For 2005, 37 countries have been designated as beneficiary sub-Saharan African countries. These countries, as well as the 11 countries currently ineligible, are listed below. Section 506A of the 1974 Act provides that the President shall monitor, review, and report to Congress annually on the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine whether each beneficiary sub-Saharan African country should continue to be eligible, and whether each sub-Saharan African country that is currently not a beneficiary sub-Saharan African country, should be designated as such a country. The President's determinations will be included in the annual report submitted to Congress as required by Section 106 of the AGOA. Section 506A of the 1974 Act requires that, if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, he must terminate the designation of the country as a beneficiary sub-Saharan African country.

The Subcommittee is seeking public comments in connection with the annual review of the eligibility of beneficiary sub-Saharan African countries for the AGOA's benefits. The Subcommittee will consider any such comments in developing recommendations on country eligibility for the President. Comments related to the child labor criteria may also be considered by the Secretary of Labor in making the findings required under section 504 of the 1974 Act.

The following sub-Saharan African countries were designated as beneficiary sub-Saharan African countries in 2005:

Angola
Republic of Benin
Republic of Botswana
Burkina Faso
Republic of Cameroon
Republic of Cape Verde
Republic of Chad
Republic of Congo
Democratic Republic of Congo
Republic of Djibouti
Ethiopia
Gabonese Republic
The Gambia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Sao Tome & Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

The following sub-Saharan African countries were not designated as beneficiary sub-Saharan African countries in 2005:

Republic of Burundi
Central African Republic
Federal Islamic Republic of Comoros
Republic of Cote d'Ivoire
Republic of Equatorial Guinea
State of Eritrea
Republic of Liberia
Somalia
Republic of Togo
Republic of Sudan
Republic of Zimbabwe

Requirements for Submissions: In order to facilitate the prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions to *FR0525@ustr.eop.gov* in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: ''2005 AGOA Annual Country Review.'' Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'' and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, Monday through Friday, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m. An appointment to review the file may be made by calling

(202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–18278 Filed 9–13–05; 8:45 am]

BILLING CODE 3190–W5–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP) Program: Notice Regarding the 2005 and Ongoing Country Practice Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice sets forth the timetable for the hearing and public comments on petitions requesting modifications in the status of certain GSP beneficiary countries.

DATES: The GSP regulations (15 CFR part 2007) provide the schedule of dates for conducting the annual country practice review unless otherwise specified in a **Federal Register** notice. The current revised schedule follows. Notification of any other changes will be given in the **Federal Register**.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on November 30, 2005, beginning at 10 a.m., in combined Rooms 1 and 2, 1724 F Street NW., Washington, DC. The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' below, the name, address, telephone number, and facsimile number and e-mail address, if available, of the witness(es) representing their organization to Marideth Sandler, Executive Director of the GSP Program and Chairman of the GSP Subcommittee of the TPSC by 5 p.m., November 9, 2005. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English, and also must be received by 5 p.m., November 9, 2005. Oral testimony before the GSP Subcommittee of the TPSC will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited below and are submitted, in English, by 5 p.m., December 14, 2005. Parties not wishing to appear at the public hearing may submit post-hearing written briefs or statements, in English, by 5 p.m., December 14, 2005.

Modifications to the list of countries eligible for GSP benefits resulting from the 2005 Annual Review of Country Practice Cases will be announced on or about June 30, 2006, in the **Federal Register**, and any changes will take effect on the effective date announced.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. Telephone number is (202) 395–6971; fax number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP statute, Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) provides duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. USTR has received a number of petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(a), 2462(b), and 2462(c)).

Petitions Accepted for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has recommended, and the TPSC has accepted, certain country practice petitions (see Annex A) to be included in the 2005 Annual Review. Acceptance of a petition for review is not indicative of the ultimate disposition of the petition. Acceptance indicates only that the listed petitions warrant further consideration.

Opportunities for Public Comment

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any petition that have been accepted for review. Submissions should comply with 15 CFR Part 2007, except as modified below.

Requirements for Submission

In order to facilitate prompt processing of submissions, USTR will accept only electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English with the total submission not to exceed 20 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: ''2005 GSP Annual Country Practice Review'' followed by the subject country, case number, and, as appropriate ''Written Comments'', ''Notice of Intent to Testify'', ''Pre-hearing brief'', or ''Post-hearing brief''. Documents must be submitted in English in one of the following formats: MSWord (.DOC), WordPerfect (.WPD), or text (.TXT) files. Documents may not be submitted as electronic image files or contain imbedded images (for example, ''.JPG'', ''.TIF'', ''.PDF'', ''.BMP'', or ''.GIF''). Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. Any data attachments to the submission must be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's e-mail address and other identifying information. The e-mail address for these submissions is *FR0441@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee of the TPSC to

arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Marideth J. Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

BILLING CODE 3901–W5–P

Annex A

GENERALIZED SYSTEM OF PREFERENCES (GSP)

2005 ANNUAL REVIEW OF COUNTRY PRACTICE CASES

CASE NUMBERS	PETITIONER(S)	COUNTRY	ACTION
011-CP-05	AFL-CIO	UGANDA	Worker Rights
012-CP-05	AFL-CIO	SWAZILAND	Worker Rights
015-CP-05	International Intellectual Property Alliance (IIPA)	KAZAKHSTAN	IPR
016-CP-05	IIPA	LEBANON	IPR
017-CP-05	IIPA	PAKISTAN	IPR
018-CP-05	IIPA	RUSSIA	IPR
019-CP-05	IIPA	UZBEKISTAN	IPR
020-CP-05	Distilled Spirits Council of the United States, Inc. (Distilled Spirits Council)	BULGARIA	Reverse Preference Treatment (RPT)
021-CP-05	Distilled Spirits Council	ROMANIA	RPT
022-CP-05	Pharmaceutical Research and Manufacturers of America (PhRMA)	ROMANIA	RPT

[FR Doc. 05–18228 Filed 9–13–05; 8:45 am]

BILLING CODE 3901–W5–C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Section 182 is commonly referred to as the ''Special 301'' provision of the Trade Act. In addition, USTR is required to determine which of those countries should be identified as Priority Foreign Countries. On April 30, 2005, USTR announced the results of the 2005 Special 301 review and stated that Out-of-Cycle Reviews (OCRs) would be conducted for Ukraine and Saudi Arabia. USTR will conduct these OCRs in the fall of 2005. USTR requests written comments from the public concerning the acts, policies, and practices relevant for this review under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 5 p.m. on Friday, October 14, 2005.

ADDRESSES: Comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0526@ustr.gov*, with ''Special 301 Out-of-Cycle Review: Ukraine and Saudi Arabia'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Jennifer Choe Groves, Director for Intellectual Property and Chair of the Special 301 Committee, Office of the United States Trade Representative, (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products may be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

On April 30, 2005, USTR announced the results of the 2005 Special 301 review, including an announcement that Out-of-Cycle Reviews (OCRs) would be conducted for Ukraine and Saudi Arabia. Additional countries may also be reviewed as a result of the comments received pursuant to this notice, or as warranted by events.

Requirements for Comments: Comments should include a description of the problems experienced, and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to *FR0526@ustr.gov*, with ''Special 301 Out-of-Cycle Review: Ukraine and Saudi Arabia'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the e-mail address above.

Public Inspection of Submissions: Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday.

Jennifer Choe Groves,

Director for Intellectual Property and Chair of the Special 301 Committee.

[FR Doc. 05–18280 Filed 9–13–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: New Orleans International Airport, New Orleans, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of EIS.

SUMMARY: The FAA is issuing this notice to advise the public that it is withdrawing its intent to prepare an Environmental Impact Statement (EIS) to consider a proposed taxiway to runway conversion and a new air carrier runway at Louis Armstrong New Orleans International Airport, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Environmental Specialist, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193–0640. Telephone (817) 222–5640.

SUPPLEMENTARY INFORMATION: The FAA, after coordinating with the New Orleans Aviation Board, is withdrawing its notice of intent to prepare an EIS for a proposed taxiway to runway conversion and a new air carrier runway and its associated taxiways. The publication of this notice formally terminates the FAA's EIS study for Louis Armstrong New Orleans International Airport, New Orleans, Louisiana.

Issued on: August 11, 2005.

Kelvin A. Solco,

Manager, Airports Division.

[FR Doc. 05–18272 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–57]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 26, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] 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.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 9, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–22171.

Petitioner: Shuttle America Corporation.

Section of 14 CFR Affected: 14 CFR 121.415(a), 121.417, and 121.421.

Description of Relief Sought: To permit Shuttle America Corporation (Shuttle), to the extent necessary, to employ and use EMB–170 flight attendants who have been employed, trained, and qualified by Shuttle's sister company, Chautauqua Airlines, Inc., without requiring the flight attendants to repeat all of the training requirements otherwise required for newly hired crewmembers.

[FR Doc. 05–18344 Filed 9–12–05; 1:03 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 6, 2005.

DATES: Comments must be submitted on or before October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages (44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12). On July 6, 2005, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval (70 FR 39002). FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment (44 U.S.C. 3507(b); 5 CFR 1320.12(d)). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published (44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995). OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision (60 FR 44983, Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect (5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995).

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Passenger Equipment Safety Standards.

OMB Control Number: 2130–0544.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The information gained from daily inspections is used to detect and correct equipment problems so as to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or to the general public; and to mitigate the consequences of any such occurrences, to the extent that they can not be prevented. The information provided promotes passenger train safety by ensuring requirements are met for railroad passenger equipment design and performance; fire safety; emergency systems; the inspection, testing, and maintenance of passenger equipment; and other provisions for the safe operation of railroad passenger equipment.

Annual Estimated Burden Hours: 4,502,681.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on August 7, 2005.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. 05–18273 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

State Coordination Grants; Solicitation for Proposals

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for proposals.

SUMMARY: This solicitation is for states to submit proposals for the State Coordination Grants component of the United We Ride initiative (UWR). The intent of the UWR initiative is to break down the barriers among Federal programs as they relate to transportation to ensure that transportation services are seamless, comprehensive and accessible. Specifically, UWR is tasked with seeking ways to simplify access to transportation services for persons with disabilities, persons with lower incomes, and older adults.

States Coordination Grants may be used to assist states through either planning or implementation grants. Planning grants are for states that have not yet received a UWR grant, and do not have a comprehensive action plan. Planning grants can be used to conduct a comprehensive state assessment using the UWR Framework for Action and to develop a comprehensive state action plan for coordinating human service transportation. Implementation grants are for states which have developed a comprehensive state action plan. Implementation grants can be used for implementing one or more of the elements identified within a state action plan consistent with the UWR Framework for Action. The UWR Framework for Action is a self-assessment tool for states and communities to conduct comprehensive state assessments to identify areas of success and highlight the actions still needed to improve the coordination of human service transportation. The self-assessment tool is designed to address the needs of people with disabilities, older adults, and individuals with lower-incomes. For further information on the Framework for Action, please visit: *Framework for Action* at the United We Ride Web site (*http://www.unitedweride.gov*).

DATES: Proposals must be submitted November 28, 2005. States are advised to begin the Grants.Gov registration process immediately, if they have not previously submitted grant applications through *http://www.Grants.Gov* in order to be able to meet the deadline. Grants.gov allows organizations to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. Grants.gov is the single access point for over 1000 grant programs offered by the 26 Federal grant-making agencies.

ADDRESSES: *Proposals are to be submitted electronically* through *http://www.Grants.Gov* Proposals can also be submitted in hard copy to at the address below. All proposals must be postmarked by midnight November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Bryna Helfer at PH: 202–366–1663; FAX: 202–366–3136; United We Ride Grants, 400 7th Street, SW., Room 9114, Washington, DC or *UnitedWeRide@fta.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

United We Ride (UWR) is an initiative of the Federal Interagency Coordinating Council on Access and Mobility (CCAM), established by President George W. Bush under the Executive Order on Human Service Transportation Coordination. The CCAM includes eleven Federal Departments working together to simplify access; reduce duplication; and enhance cost efficiencies within existing resources.

The Congress and the Executive Branch are interested in ensuring that various human service transportation activities funded by various Federal programs are better coordinated. The Government Accountability Office (GAO) issued a report on ''Transportation Disadvantaged Populations'' (June 2003) that identified sixty-two different Federal Programs across eight Federal agencies that provide funding that may be used to support community transportation services.

The GAO Report points out that there are multiple public and private agencies that provide human service transportation in any one community, and services vary greatly in terms of eligibility requirements, hours or scope of operation, specific destinations and quality. Given the multiplicity of programs and the significant dollar amounts spent, more effective coordination is needed to ensure better service to more people. This is especially true when Federal, state, and local budgets for human service activities are under extreme pressure. GAO, many objectives have been achieved however, the fragmentation and lack of also indicated that coordination among supporting agencies continues to be a challenge. In 2005, the CCAM submitted a report to the President outlining five overarching recommendations. As such, most of the recommendations represent interim, coordination-based solutions that the CCAM believes will strengthen existing transportation services to be more cost-effective and accountable and help providers become more responsive to consumers. The five recommendations include: (1) Coordinated transportation planning; (2) vehicle sharing; (3) cost allocation, (4) reporting and evaluation, and (5) consolidated access transportation demonstration program. The report also includes both collective and departmental action plans related to CCAM members' specific program objectives.

Program Goals for State Coordination Grants

1. Increase overall capacity of states to deliver comprehensive and coordinated human service transportation that meets the needs of the transportation-disadvantaged population (i.e., individuals with lower incomes, older adults, and persons with disabilities across the lifespan).

2. Increase cross agency/department collaboration to facilitate coordination, enhance services, and address duplication and redundancies of programs and services.

3. Implement elements of the statewide action plan that lead to a more fully coordinated human service transportation system.

Eligibility of Applicants

Eligible applicants include the Governor's office from each state. The Governor may designate a ''lead'' agency, in writing. This designation should be submitted with the state's proposal. The Federal Transit Administration (FTA) will accept proposals submitted in electronic and/or hard copy. The proposal must clearly demonstrate collaboration among multiple state agencies. The Governor's office or designated ''lead'' agency is responsible for leading the application, implementation, reporting and evaluation process.

Purpose

State Coordination Grants are intended to assist states that want to strengthen or jump start efforts to coordinate human service transportation. The UWR Framework for Action and its accompanying Facilitator's Guide enable leaders at the state level to guide a coordinating council, an interagency working group, through a transportation coordination assessment and action planning process. State Coordination Grants may be used to assist states through either planning or implementation. Planning grants can be used to conduct a comprehensive state assessment using the UWR Framework for Action and to develop a comprehensive state action plan for coordinating human service transportation. Implementation grants are for states that have developed a comprehensive state action plan. Implementation grants can be used for implementing one or more of the elements identified within their state action plan related to the UWR Framework for Action. States applying for implementation grants are encouraged to address *at least one* of the following priority areas, which will be given additional consideration in the evaluation and review process:

Priority 1: Development and implementation of transit pass policy and programs with Medicaid and other agencies.

Priority 2: Development of strategies for meeting the transportation needs of older adults, people with disabilities,

and individuals with lower incomes during natural or man-made disasters.

Priority 3: Development of a cross agency coordinated tracking and accountability system; including real time eligibility, billing, and reporting.

Examples of How States May Use State Coordination Grants Funds

Planning Grants

• Conduct a statewide assessment of current needs, resources and services related to human service transportation using UWR Framework for Action.

• Based on the UWR Framework for Action assessment, develop action plans that improve coordination of human service transportation for individuals with disabilities, older adults, and persons with lower incomes.

(**Note:** Pertains only to states that have not previously received planning grants.)

Implementation Grants

• Implement statewide interagency transit pass program.

• Conduct statewide seminars/conferences to establish statewide dialogue that leads to effective action steps for future coordination of human service transportation issues.

• Develop a statewide regionalized coordination system.

• Replicate a successful model in one or more communities across the state (*i.e.*, transit pass program; volunteer driver; travel training; etc.).

■ Integrate technology to address the needs of coordination on human service transportation, including real time eligibility, accountability, billing, and reporting.

■ Develop and test a mobility management strategy.

Assistance to Grantee

States receiving grants may also receive technical assistance through a variety of resources. Specific resource centers include the Community Transportation Assistance Program (CTAP), the Rural Transportation Assistance Program (RTAP), Easter Seals Project ACTION, Intelligent Transportation Systems Peer to Peer Program,and the Multi-State Technical Assistance Program. The range of services available includes, but is not limited to, assistance with coalition building, assessment, strategic planning, training, policy development, customer outreach, implementation strategies, and evaluation. Technical assistance is provided via phone, e-mail, during on-site visits when appropriate. States will also be able to receive technical assistance through the UWR ambassador program. The UWR ambassador program is a program to provide hands-on assistance to states in the development and delivery of coordinated human service transportation programs.

Proposal Submission

Your proposal should be compatible with Microsoft Word and submitted electronically through the *http://.www.Grants.Gov* web site. The proposal must include a project narrative that addresses all of the elements for submission in either the planning or implementation category. Proposals may not exceed ten pages, not including the budget or letters of support. Proposals should be submitted double-spaced, in Times New Roman, 12-point font. Applicants must also submit letters of support either via fax to United We Ride at 202–366–3136, or scanned documents attached to the *http://.www.Grants.Gov.* submission.

Applicants may apply for grants in the areas of planning or implementation. Planning grant applicants should address ALL of the following elements in their proposal applications.

1. Briefly describe the state's mission as it relates to the coordination of human service transportation.

2. Briefly describe the state's strategy for conducting the Framework for Action or other tool that leads to enhanced dialogue and understanding of current status of coordinated transportation system.

3. Briefly describe how this grant will address and support your plans to develop a comprehensive state action plan for coordinating human service transportation.

4. Describe the level of coordination/collaboration with other state agencies and other partners (*e.g.,* providers, consumers, planning entities, private for profit, non-profit organizations, and government).

5. Briefly describe how the state action (3.) plan will meaningfully involve consumers in the development and implementation of human service transportation planning process.

6. Briefly describe the plan for coordination/collaboration with the emergency planning efforts in the state regarding transportation for people with disabilities, older adults, and individuals with lower incomes during a natural or man-made disaster.

7. Submit a narrative of your proposed project that includes a project time-line with deliverables.

8. The proposal must include a budget that includes a line item for each budget category and a budget narrative. **Note:** Grant funds may not be used to support capital equipment, or for the provision of services.

9. Submit letters of support from state agencies, the Governor and other stakeholders.

Criteria for Rating and Selecting Proposals (Planning Grants)

1. The extent to which the applicant demonstrates a high level of executive leadership and commitment, shared decision making, and policy adoption among agencies within the state. Applicants should submit letters of commitment from partner agencies. Letters of commitment should be submitted via fax separately to UWR at fax number 202–366–3136 or as scanned documents attached to the *http://.www.grants.gov* submission.

2. The extent to which the applicant's planning process includes a comprehensive range of transportation services for older adults, people with disabilities, *and* individuals with lower incomes.

3. The extent to which the applicant has clearly defined a plan for conducting the Framework for Action or other process for building dialogue and understanding current status of coordination issues in the state.

4. The extent to which the applicant has clearly described the process, timeline, stakeholder input, and strategies for developing a multi-agency action plan for coordinated human service transportation plan.

5. The extent to which the applicant has clearly outlined the level of coordination/collaboration with other state agencies and other partners (*e.g.,* providers, consumers, planning entities, private for profit, non-profit organizations, and government).

6. The extent that there is a plan to include agencies involved in emergency preparedness to address transportation needs during natural or man-made disasters.

7. The extent to which the applicant has clearly defined the strategy and approach for meaningful involvement of consumers in the development and implementation of human service transportation grant activities.

8. The extent to which the proposed project's goals, objectives, timelines, evaluation plan and budget are congruent with the proposed activities.

Implementation grant applicants should address ALL of the following elements in their proposal applications.

1. *Applicants for implementation grants must submit Page 41 of the Framework for Action self-assessment tool and a copy of the state's action plan.*

2. Briefly described the state's mission as it relates to the coordination of human service transportation.

3. Describe the level of coordination/collaboration with state agencies and any other partners (*e.g.,* providers, consumers, private for profit, non-profit organizations, or government).

4. Briefly describe how the state action plan will meaningfully involve consumers in the development and implementation of human service transportation grant activities.

5. Submit a narrative of proposed project activities that includes a project time-line with deliverables, milestones, and evaluation plan. Briefly describe how these activities related to the state's action plan and the Framework for Action.

6. Describe a plan for evaluation of the implementation activities outlined in the proposal.

7. Submit a budget that includes a line by line itemized budget and a budget narrative. **Note:** Grant funds may not be used to support capital equipment, or for the provision of services.

8. Submit letters of support from state agencies, the Governor and other stakeholders.

9. *Optional:* Briefly address how the state will address one of the priority areas outlined in the solicitation, including strategies, partners, deliverables, timelines, and evaluation strategies. Discuss how this proposed activity relates to the state action plan. NOTE: States choosing this option may use an additional three pages to submit their priority area.

Criteria for Rating and Selecting Proposals (Implementation Grants)

1. The extent to which the state has a well established action plan on human service transportation coordination adopted by multiple state agencies and addresses the transportation needs of older adults, people with disabilities and individuals with lower incomes.

2. The extent to which the state demonstrates leadership and resources (e.g., funding, staff, policies, etc.) to implement coordinated human service transportation initiatives.

3. The extent to which the state adequately demonstrates coordination/collaboration with state agencies and any other partners (e.g., providers, consumers, private for profit, non-profit organizations, or government).

4. The extent to which the state demonstrates meaningful involvement of consumers in the development and implementation of human service transportation grant activities.

5. The extent to which the proposed activities, timelines, evaluation plan, and budget are congruent with the proposed goals, objectives, and outcomes for the project and state action plan.

6. The extent the state has addressed the development and implementation of performance measures and evaluation strategy for the targeted activities outlined in the proposal.

7. Priority areas: States will receive additional consideration for addressing *one* of the priority areas. Evaluation in this area will be based on the extent that the state has clearly defined a strategy and approach to address the priority area. The extent to which there is adequate consideration and participation by the relevant agencies and leadership for successful implementation and change process.

Eligibility/Expenses: Grant funds may not be used for capital purchases, or provision of services. Grant funds may be used to support personnel for planning, training, coordination, mobility management, and other administration activities required to enhance coordination among and across agencies within the state. Supplies, small equipment (computers, etc.), and travel are also eligible expenses.

Review and Award Process: Interagency panels from CCAM will review each grant application. The Federal Transit Administrator will notify successful applicants. The anticipated notification of grantee selections is January 2, 2006. Regional offices will work with respective Washington, DC based offices and technical assistance providers to assist states with implementation after the selections are announced. Selected recipients will have pre-award authority as of the date of notification of project selection. FTA will manage the grants through FTA's electronic award and management web-based system.

Grant Periods and Awards: The grant period is one year (starting on the date of the grant contract obligation date and ending one year from that date.) Grants will be given to states that submit proposals and meet the requirements outlined in this notice. In FY 2005 $1,250,000 is available for UWR State Coordination Grants initiative. Grants under this initiative range from $35,000 to $75,000. Maximum funding for states applying for planning grants is $35,000. Maximum funding for states applying for implementation grants is $75,000.

Issued On: September 8, 2005.

Jennifer L. Dorn,

Administrator.

[FR Doc. 05–18274 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

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

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on September 7, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		NEW EXEMPTION		
14232–N	PHSMA–22248	Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA.	49 CFR 173.302a(a), 173.304a(a), and 180.205.	To authorize the manufacture, marking, sale and use of non-DOT specification fully-wrapped carbon fiber composite cylinders with a seamless aluminum liner for shipment for certain Division 2.1 and Division 2.2 gases. (modes 1, 2, 3, 4, 5).
14233–N	PHSMA–22245	U.S. Department of Energy (DOE), Richland, WA.	49 CFR 172.200, 172.300, 172.400, 172.600, 173.302a.	To authorize the transportation in commerce of non-DOT specification sealed electron tubes containing helium, compressed which are installed in a mobile radiation portal monitor. (mode 1).
14234–N	PHSMA–22246	Federal Industries Corporation, Plymouth, MN.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of a UN4G fiberboard box as the outer packaging for lab pack applications. (modes 1, 2, 3).
14235–N	PHSMA–22247	Bunkers of St. Croix, Inc., Christiansted, VI.	49 CFR 180.413	To authorize the repair of certain DOT-Specification cargo tank motor vehicles in the US Virgin Islands to be performed by a repair facility that does not hold a Valid National Board Certification of Authorization for use of the National Board ''R'' stamp.
14236–N	PHSMA–22388	Sexton Can Company Inc., Decatur, AL.	49 CFR 173.304(e)	To authorize the manufacture, mark, sale and use of a DOT Specification 2Q non-refillable cylinder of up to 1 liter for use in transporting engine starting fluid. (modes 1, 2, 3, 4, 5).
14237–N	PHSMA–22387	Advanced Technology Materials, Inc., (ATMI), Danbury, CT.	49 CFR 173.302a	To authorize the manufacture, marking, sale and use of non-DOT specification packagings for Division 2.3 materials transported by highway and cargo vessel. (modes 1, 3).
14238–N	PHSMA–22357	DACC Ltd., Kungnam-do, South Korea.	49 CFR 173.302	To authorize the manufacture, mark, sale, and use of non-DOT specification fully-wrapped carbon-fiber reinforced aluminum lined cylinders. (modes 1, 2, 3, 4, 5).
14239–N	PHSMA–22386	Marlin Gas Transport, Inc., Odessa, FL.	49 CFR 180.205	To authorize the transportation in commerce of certain compressed gases in DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (modes 1, 2, 3, 4, 5).

[FR Doc. 05–18270 Filed 9–13–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration; Office of Hazardous Materials Safety

Notice of applications for modification of exemption.

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before September 29, 2005.

Address comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 9, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
MODIFICATION EXEMPTIONS					
5022–M		Boeing Company, The Anaheim, CA.	49 CFR 174.101(L); 174.104(d); 174.112(a); 177.834(l)(1).	5022	To modify the exemption to authorize the transportation of an additional Division 1.3C material in temperature controlled equipment.
7835–M		Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 177.848(d)	7835	To modify the exemption to authorize the use of an E track system as an approved method for securing cylinders transporting various hazardous materials.
8495–M		Kidde Aerospace, Wilson, NC.	49 CFR 173.304(a)(1); 178.47; 175.3.	8495	To modify the exemption to authorize the transportation of additional Division 2.2 materials and expand the use of non-DOT specification cylinders to include Military Ground vehicles.
11215–M		Orbital Sciences Corporation, Mojave, CA.	49 CFR Part 172, Subparts C, D; 172.101, Special Provision 109.	11215	To modify the exemption to change the packaging language to reflect current designs and add an additional flight plan launch site.
12290–M	RSPA–99–5858	Savage Services Corp. (formerly Savage Industries, Inc.), Pottstown, PA.	49 CFR 174.67(a)(2)	12290	To modify the exemption to authorize the unloading of additional Class 3 and 8 and Division 5.1 materials in DOT Specification and non-DOT specification tank cars.
12874–M	RSPA–01–11103	Zomeworks Corporation, Albuquerque, NM.	49 CFR 71 to 180 ...	12874	To modify the exemption to authorize an increase in internal volume and length of the refrigerating machine canister and tubing and the transportation of an additional Division 2.2. material.
13487–M	RSPA–04–17293	University of Colorado at Health Sciences Center, Aurora, CO.	49 CFR 173.197; 172.301(a), (b), (c); 173.196(a), (b); 178.609.	13487	To modify the exemption to authorize an additional physical address of a newly acquired laboratory space for the one-way transportation of certain Division 6.2 materials in alternative packaging.
13601–M	RSPA–04–18713	DS Containers Inc., Lemont, IL.	49 CFR 173.306(b)(1); 175.3.	13601	To modify the exemption to authorize the use of an alternative non-DOT specification inner non-refillable container and revised procedures for testing an approved lot.
13963–M	RSPA–2004–19299	Duratek Services, Inc., Columbia, SC.	49 CFR 173.403; 173.427; 173.465.	13963	To modify the exemption to authorize the use of alternative packaging for the transportation of Class 7 material.
14096–M	RSPA–05–20125	United States Enrichment Corporation (USEC), Paducah, KY.	49 CFR 173.420	14096	To modify the exemption to authorize the one-time, one-way transportation of additional Model 480M and Model 48A cylinders containing a Class 7 material.

[FR Doc. 05–18271 Filed 9–13–05; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2005–21159, Notice No. 04]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

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

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that PHMSA is investigating the unauthorized marking of high- and low-pressure compressed gas cylinders, including fire extinguishers, oxygen cylinders, and self-contained breathing apparatus, by All-Out Fire Equipment Co., Inc. The company is located at 385 High Street, Holbrook, NY. On June 15, 2004, two inspectors from the Office of Hazardous Materials Enforcement (OHME—Eastern Region) conducted a compliance inspection of All-Out Fire Equipment Co., Inc. During the inspection, PHMSA obtained evidence that All-Out Fire Equipment Co., Inc. had marked, certified, and returned to service an undetermined number of cylinders as being properly tested in accordance with the Hazardous Materials Regulations (HMR), without conducting the required hydrostatic testing of those cylinders.

All-Out Fire Equipment Co., Inc.'s retest records revealed that, from November 2003 through June 2004, All-Out Fire Equipment Co., Inc. had returned to service hundreds of cylinders without hydrostatically testing them. In addition, PHMSA found no records of hydrostatic testing for cylinders All-Out Fire Equipment Co., Inc. had requalified prior to November 2003. This and other evidence obtained by PHMSA indicates that All-Out Fire Equipment Co., Inc. also failed to perform required hydrostatic testing on cylinders it requalified prior to November 2003.

Hydrostatic retesting and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retesting and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should have been condemned in the first place. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material.

FOR FURTHER INFORMATION CONTACT: Chris Michalski, Senior Inspector, Office of Hazardous Materials Enforcement, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08626. Telephone: (609) 989–2256, Fax: (609) 989–2277.

SUPPLEMENTARY INFORMATION: Through its inspection, PHMSA has determined that All-Out Fire Equipment Co., Inc. marked and certified an undetermined number of cylinders as having been properly tested in accordance with the HMR, without actually retesting the cylinders. During the inspection, All-Out Fire Equipment Co., Inc. was unable to calibrate its test equipment. In addition, All-Out Fire Equipment Co., Inc. failed to keep complete records of its retest and re-inspections; thus, it is impossible to determine the number of cylinders that All-Out Fire Equipment Co., Inc. has improperly re-certified. These cylinders pose a potential safety risk to the public.

The cylinders in question are stamped with the following RIN: A261. The markings appear in the following pattern:

A 2
M Y
1 6

M is the month of retest (*e.g.* 10), and Y is the year of the retest (*e.g.* 01).

Anyone who has a cylinder that has been serviced by All-Out Fire Equipment Co., Inc. and that is marked with RIN number A261 should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Filled cylinders (if filled with an atmospheric gas) described in this safety advisory should be vented or otherwise safely discharged and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Under no circumstance should a cylinder described in this safety advisory be filled, refilled, or used for its intended purpose until it is re-inspected and retested by a DOT-authorized retest facility.

It is further recommended that persons finding or possessing a cylinder or cylinders described in this safety advisory contact Inspector Michalski for additional information. The inspector can also provide a list of authorized retest facilities in your area or you may obtain such a list at the following Web site: *http://hazmat.dot.gov*.

Issued in Washington, DC on September 9, 2005.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 05–18275 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 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 14, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1008.

Type of Review: Revision.

Title: Passive Activity Loss Limitations.

Form: IRS form 8582.

Description: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

Respondents: Individuals or Households, Business or other-for-profit and Farms.

Estimated Total Burden Hours: 17,435,949 hours.

OMB Number: 1545–0126.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Form: IRS form 1120–F.

Description: Form 1120–F is used by foreign corporations that have

investments, or a business or a branch in the U.S. The IRS uses Form 1120-F to determine if the foreign corporation has correctly reported its income, deductions and tax, and to determine if it has paid the correct amount of tax.

Respondents: Business or other for profit.

Estimated Total Burden Hours: 4,793,792 hours.

OMB Number: 1545–1518.

Type of Review: Extension.

Title: HSA, Archer MSA or Medicare Advantage MSA Information.

Form: IRS form 5498-SA.

Description: Section 220(h) requires trustees to report to the IRS and medical savings accountholders contributions to and the year-end fair market value of any contributions made to a medical savings account (MSA). Congress requires Treasury to report to them the total contributions made to an MSA for the current tax year. Section 1201 of the Medicare prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. 108–173) created new Code section 223 and section 223(h) requires the reporting of contributions to and the year-end fair market value of health savings accounts for tax years beginning after December 21, 2003.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 6,988 hours.

OMB Number: 1545–1793.

Type of Review: Extension.

Title: Rev. Proc. 2002–43 Determination of Substitute Agent for a Consolidated Group.

Description: The information is needed in order for (i) a terminating common parent of a consolidated group to notify the IRS that it will terminate and to designate another corporation to be the group's substitute agent, pursuant to Treas. Reg. Section 1.1502–77(d)(1) or Section 1.1502–77A(d); (ii) the remaining members of a consolidated group to designate a substitute agent pursuant to section 1.1502–77(d); (iii) the default substitute agent to notify the IRS that it is the default substitute agent pursuant to section 1.1502–77(d)(2); or (iv) requests by a member of the group for the IRS to designate a substitute agent or replace a previously designated substitute agent. The IRS will use the information to determine whether to approve the designation (if approval is required), to designate a substitute agent, or to replace a substitute agent, and to change the IRS records to reflect the name and other information about the substitute agent.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 400 hours.

OMB Number: 1545–1941.

Type of Review: Extension.

Title: Consumer Cooperative Exemption Application.

Form: IRS form 3491.

Description: A cooperative uses Form 3491 to apply for exemption from filing information returns (Form 1099-PATR) on patronage distributions of $10 or more to any person during the calendar year.

Respondents: Business or other for-profit, Individuals or households and Farms.

Estimated Total Burden Hours: 148 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. 05–18183 Filed 9–13–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 14, 2005 to be assured of consideration. Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0022.

Type of Review: Extension.

Title: Customer Identification Programs for Future Commission Merchants and Introducing Brokers.

Description: Section 326 of the USA PATRIOT Act added a subsection (1) to 31 U.S.C. 5318 of the Bank Secrecy Act that requires the Secretary of Treasury to require financial institutions to establish and maintain programs to verify the identity of customers opening an account. FinCen has adopted such rules for Futures Commission Merchants and Introducing Brokers.

Respondents: Business or other for-profit.

Estimated Total Reporting Burden: 20,471 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Financial Crimes Enforcement Network, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182.

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. 05–18184 Filed 9–13–05; 8:45 am]

BILLING CODE 4810–02–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: This meeting scheduled to be held on Friday, September 23, 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* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

Dated: September 12, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–18356 Filed 9–13–05; 8:45 am]

BILLING CODE 4811–33–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Allocation Availability (NOAA) Inviting Applications for the CY 2006 Allocation Round of the New Markets Tax Credit Program

ACTION: Change of allocation application deadline.

SUMMARY: On July 15, 2005, the Community Development Financial Institutions Fund (the ''Fund'') announced in a NOAA for the New Markets Tax Credit Program (70 FR 41075) that the deadline for electronic allocation applications is 5 p.m. ET on September 21, 2005. The NOAA also announced that paper allocation applications must be postmarked on or before September 21, 2005 and received by the Fund at the address cited in the NOAA by 5 p.m. ET on September 30, 2005. Due to the recent occurrence of certain natural disasters, the Fund will consider extending these deadlines, on a case-by-case basis, for applicants that have been directly affected by said disasters. In general, to be eligible for an application deadline extension, an applicant must demonstrate that it cannot submit its application by September 21, 2005 because:

1. Its principal place of business is located in a county for which the Federal Emergency Management Agency (FEMA) has: a) issued a ''major disaster declaration'' since July 15, 2005; and b) made a determination that such county is eligible for both ''individual and public assistance''; or

2. There exist mitigating factors directly attributable to the disaster-related conditions in a county for which FEMA has: a) issued a ''major disaster declaration'' since July 15, 2005; and b) made a determination that such county is eligible for both ''individual and public assistance.''

If you would like to request an application deadline extension, you must send your request via e-mail to *grantsmanagement@cdfi.treas.gov* with the subject line ''Deadline Extension Request: 2006 NMTC Allocation Application.'' If you are unable to file your request by e-mail, you may contact the Fund by telephone at (202) 622–8226 or by facsimile at (202) 622–6453. These are not toll free numbers. Be sure to indicate in your telephone message or fax that you are requesting an extension of the 2006 NMTC Allocation Application deadline.

In your request, you must explain why the application deadline extension is necessary, citing the specific circumstances preventing your organization from completing and/or submitting the application materials by the deadlines set forth in the NOAA. You must address, at a minimum, whether: your offices were closed and/or were without electricity for significant periods of time; staff members were not available to work on the application materials during critical periods; and/or other application partners (*e.g.*, investors, consultants, community partners) were not available to provide materials critical to the compilation of a complete application. To ensure full consideration of your request prior to the September 21, 2005 Allocation Application deadline, you should submit your extension request as soon as feasible and by no later than 5 p.m. ET, Monday, September 19, 2005. The Fund reserves the right, in its sole discretion, to request additional supporting documentation before rendering a final determination.

Please also note that the Fund is not at this time accepting any requests to extend deadlines pertaining to the issuance of qualified equity investments by prior allocatees planning to apply for allocations in the CY 2006 round of the NMTC Program (*see* section III.A.2.(a) of the NOAA). The Fund may issue, in its sole discretion, additional guidance on this matter at a later date.

All other information and requirements set forth in the July 15, 2005 NOAA shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through September 19, 2005. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on September 19, 2005 until after the allocation application deadline of September 21, 2005. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program.

A. *Information technology support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from accessing the Low-Income Community maps using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic support:* If you have any questions about the programmatic requirements of this NOAA, contact the Fund's NMTC Program Manager by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Administrative support:* If you have any questions regarding the administrative requirements of this NOAA, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *IRS support:* For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW., Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

E. *Legal counsel support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov.* Requests for legal reviews must be received by the Fund no later than October 14, 2005.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: September 9, 2005.

Jeffrey C. Berg,

Legal Counsel, Community Development Financial Institutions Fund.

[FR Doc. 05–18325 Filed 9–13–05; 8:45 am]

BILLING CODE 4810–70–P

Corrections

Federal Register

Vol. 70, No. 177

Wednesday, September 14, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–027]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

Correction

In rule document 05–17473 beginning on page 52308 in the issue of Friday, September 2, 2005, make the following correction:

On page 52308, in the second column, the information in the **DATES** section is corrected to read as follows: ''The new effective period of rule §165.T13–009 is from 9:30 on August 6, 2005 to 11:00 p.m. on September 17, 2005''.

[FR Doc. C5–17473 Filed 9–13–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 14, 2005

Part II

Department of Housing and Urban Development

24 CFR Part 320
Government National Mortgage Association: Excess Yield Securities; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 320

[Docket No. FR–4958–P–01; HUD–2005–0018]

RIN 2503–AA18

Government National Mortgage Association: Excess Yield Securities

AGENCY: Government National Mortgage Association, HUD.

ACTION: Proposed rule.

SUMMARY: The Government National Mortgage Association (Ginnie Mae) is developing a new program under which Ginnie Mae will guarantee securities backed by the excess servicing income relating to one or more mortgage pools or loan packages underlying previously issued Ginnie Mae mortgage-backed securities (Excess Yield Securities). This proposed rule would clarify the authority of Ginnie Mae to guarantee this new product and would provide Ginnie Mae the opportunity to consider public comment before implementing the program.

DATES: *Comment Due Date:* November 14, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov*; or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket*. Follow the link entitled View Open HUD Dockets. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above Addresses. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Ledbetter, Director, Securities Policy and Research, Government National Mortgage Association, 550 Twelfth Street, SW., Third Floor, Washington, DC 20024; telephone (202) 401–8970 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Description of Program

In furthering its statutory mission of expanding affordable housing in America by linking domestic and global capital markets to the Nation's housing markets, Ginnie Mae, operating under its current legal authority, is planning to implement an Excess Yield Securities program (Excess Yield Program) by providing its guaranty to interest-only securities backed by a portion of the servicing fee that is paid out of the monthly cash flows from government-insured or guaranteed mortgage loans backing previously issued Ginnie Mae guaranteed mortgage-backed securities (MBS). As currently contemplated, the cash flows backing the Excess Yield Securities would be that portion of a qualifying issuer's servicing cash flows with respect to the related mortgage pools or loan packages that is greater than the minimum amount of servicing required by Ginnie Mae. The Excess Yield Securities would be ''based on and backed by a trust or pool composed of mortgages which are insured under the National Housing Act'' and therefore eligible for guaranty as authorized by 12 U.S.C. 1721(g)(1)(ii), just as their related Ginnie Mae-guaranteed MBS are.

Ginnie Mae expects that the servicing cash flows would be pooled and would back securities guaranteed by Ginnie Mae and upon which Ginnie Mae would charge a guaranty fee pursuant to 12 U.S.C. 1721(g)(1) and 24 CFR 320 of the implementing regulations. The guarantee fee would be no more than six basis points, as required by 12 U.S.C. 1721(g)(3)(A). Although a guaranty fee has been assessed against the related MBS previously guaranteed, the servicing cash flows that serve as the collateral for these new securities have not backed securities upon which a fee has been assessed.

The purpose of this rule is to affirm Ginnie Mae's authority to guarantee Excess Yield Securities, to charge guaranty fees for such guarantee, and to revise Ginnie Mae's authorizing regulations to clarify their application to the Excess Yield Program. Because Ginnie Mae has not previously guaranteed servicing cash flows, and charged a fee for such guarantee, Ginnie Mae is providing an opportunity for prior public notice and comment before program implementation.

Purpose of Excess Yield Program

The Excess Yield Program will allow qualifying Ginnie Mae issuers to reduce the amount of mortgage servicing rights on their balance sheets, which will in turn reduce the amount of capital they are required to hold against that asset. It will also reduce their need to use costly hedging tools to hedge against fluctuations in the value of their mortgage servicing rights. By increasing the liquidity of mortgage servicing rights for Ginnie Mae issuers, the Excess Yield Program should lower the costs of, and encourage the origination of, government-insured and guaranteed loans that back Ginnie Mae MBS. This will directly benefit low- and moderate-income borrowers and further Ginnie Mae's mission.

Authority To Charge Commitment and Guaranty Fees

The structure of the transaction would generate new fee revenue to Ginnie Mae from the payment of commitment fees and guaranty fees, collected at the issuance of the Excess Yield Securities. A guaranty fee would be charged pursuant to 12 U.S.C. 1721(g)(1) and would be limited to six basis points as restricted by 12 U.S.C 1721(g)(3)(A). Ginnie Mae believes that the Excess Yield Securities will increase the availability and decrease the cost of funds for homeowners by reducing costs to lenders.

Program Administration

The program would provide a variety of safeguards to minimize the risk to the Federal government, as well as to investors. Additional risk to taxpayers would be minimal because the excess yield securities guaranteed by Ginnie Mae would be backed by the excess servicing cash flows, which are part of the interest payments on the underlying federally insured or guaranteed mortgages that are not already passed through as payments to investors in existing Ginnie Mae MBS. In addition, participants in Ginnie Mae's Excess Yield Program would be carefully selected through a review process that includes strict eligibility requirements based upon issuer competence and financial condition. The operational risks associated with the new product would be mitigated by ongoing monitoring procedures. Investors eligible to purchase this product would be limited, by virtue of the minimum

investment amount, to those institutions that meet the requirements to be classified as accredited institutional investors, thus protecting small investors from the increased risks associated with interest-only securities.

Ginnie Mae issuers will be responsible for making timely payments on the Excess Yield Securities to investors who own the excess-yield securities, regardless of whether such payments are received from the mortgage borrowers. To the extent that a Ginnie Mae issuer defaults on its payment obligations on the Excess Yield Securities, Ginnie Mae would provide timely payment to the investors. Issuers of Excess Yield Securities would be subject to extinguishment of their rights to participate in Ginnie Mae's programs under certain circumstances, including a failure to pay investors. Ginnie Mae anticipates that program participants shall pay transaction fees, including trustee, accountant, legal, and other fees. Excess Yield Securities will help to modernize Ginnie Mae's program.

To affirm and clarify Ginnie Mae's authority to take such action, this rule proposes to add a new § 320.8 to HUD's regulations governing the guaranty of MBS to include an explicit reference to the cash flows from eligible mortgages as backing a guaranteed security. New § 320.8 would define Excess Yield Securities as securities backed by the excess servicing income relating to mortgages underlying previously issued Ginnie Mae MBS. The proposed new regulatory section would specify that Ginnie Mae will guarantee the timely payment of interest as provided by the terms of the security.

Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandate on any State, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969. (42 U.S.C. 4321)

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and, by approving it, certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The proposed rule affirms and clarifies the authority of Ginnie Mae to guarantee a type of security it had not previously guaranteed and, as such, has no impact on entities in which the size of entities is a relevant consideration. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's program responsibilities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the executive order.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the executive order (although not economically significant, as provided in section 3(f)(1) of the executive order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 320

Mortgages, Securities.

Accordingly, HUD proposes to amend 24 CFR part 320 to read as follows:

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citation for 24 CFR part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g) and 1723a(a); and 42 U.S.C. 3535(d).

2. Add § 320.8 to read as follows:

§ 320.8 Excess Yield Securities.

(a) *Definition.* Excess Yield Securities are securities backed by the excess servicing income relating to mortgages underlying previously issued Ginnie Mae mortgage-backed securities.

(b) *GNMA guaranty.* The Association guarantees the timely payment of interest as provided by the terms of the security.

Dated: August 16, 2005.

Michael J. Frenz,

Executive Vice President.

[FR Doc. 05–18182 Filed 9–13–05; 8:45 am]

BILLING CODE 4210–66–P

Federal Register

Wednesday,
September 14, 2005

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, and 135
Service Difficulty Reports; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. FAA–2000–7952]

RIN 2120–AI08

Service Difficulty Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration is proposing to withdraw a final rule published on September 15, 2000 that would have amended the reporting requirements for certificate holders concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. The effective date of this final rule has been delayed several times and is now January 31, 2006. We are proposing to withdraw this rule to allow the FAA time to re-examine the service difficulty report (SDR) program based on comments received and other developments since the final rule was published. We are also proposing several amendments that improve the existing SDR program because they did not receive significant comment when proposed in the final rule.

DATES: Send your comments on or before October 14, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2000–7952] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emilio Estrada, Flight Standards Service, Aircraft Maintenance Division (AFS–300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5571.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment 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 h*ttp://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

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

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web site (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web site at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web site at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Statutory Authority

Title 49, 44701 of the United States Code, authorizes the Administrator of the Federal Aviation Administration to prescribe regulations for practices the Administrator finds necessary for safety in air commerce [49 U.S.C. 44701(a)(5)]. Pursuant to that statutory authority, the Administrator has prescribed regulations for certificate holders on the reporting of failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components (commonly called Service Difficulty Reports). These regulations are found at 14 CFR 121.703, 121.704, 121.705, 125.409, 125.410, 135.415, and 135.416. This action proposes amendments to those regulations.

Background

On September 15, 2000, the FAA published a final rule (65 FR 56191) entitled, ''Service Difficulty Reports,'' Amendment Numbers 121–279, 125–35, 135–77, and 145–22. That final rule, applicable to air carriers and certificated domestic and foreign repair station operators, amended the requirements for reporting failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. In the final rule, the FAA also sought comments on the impact of paperwork and other information collection burdens imposed on the public. The comment period closed on November 14, 2000, and the effective date was scheduled for January 16, 2001.

The FAA received extensive written comments raising concerns with many of the provisions of the new SDR requirements. In response, the FAA held a public meeting about the final rule on December 11, 2000. Participants at that public meeting also raised significant issues concerning the implementation of the final rule.

As a result of the concerns raised at the public meeting and during the comment period, the FAA delayed the effective date of the final rule to July 16, 2001. This effective date was subsequently delayed four more times (66 FR 21626, April 30, 2001/66 FR 58912, November 23, 2001/67 FR 78970,

December 27, 2002/68 FR 75116, December 30, 2003). The current effective date is January 31, 2006. The purpose of these delays was to provide us more time to consider industry's concerns and to revise the final rule where necessary.

Since the publication of the final rule, the FAA amended the SDR requirements for repair stations (66 FR 41117, August 6, 2001). Among other things, this amendment addressed one of the causes of potential duplicate reporting, as a part 145 certificate holder no longer has an independent reporting provision when performing work for a part 121, 125, or 135 certificate holder.

The FAA has also made improvements to the computer software and hardware that monitors SDRs. These changes are designed to facilitate searches of the SDR database and result in more useful results.

The Proposal To Withdraw the Final Rule

The intent of the final rule was to improve the existing SDR program without having a significant adverse impact on industry. The new SDR requirements were designed to correct deficiencies in the SDR program and improve the quality of the data in the SDR database. However, based on the comments received and information gathered at the public meeting and during the comment period, we now realize the final rule may not meet these goals. The concerns raised by industry also highlighted the need to resolve problems with the existing SDR program before increasing the amount and type of data recorded.

The topic that received the most comments was the FAA's economic analysis for the final rule. The commenters are uniform in their contention that the new reporting requirements will greatly increase the costs of the SDR program. The FAA received cost estimates from industry which considerably exceed our own estimates based, in part, on the wide disparity between the industry's and the FAA's evaluation of the number of SDRs resulting from the rulemaking.

While not completely agreeing with the industry's estimate of the increase in the number of reports or the significant increase in costs, we have determined that some of the assumptions we used to predict the number of additional reports could have led industry to overestimate the costs of compliance with this rulemaking. We have reevaluated the final rule in light of the data provided in the comments and have determined that the costs of this rulemaking may be higher than projected. In addition, we acknowledge that populating data collection systems with inappropriate data could have a negative impact on the FAA's ability to identify and collect meaningful safety data on the operation of aircraft.

Since the public meeting, we have considered ways to fix the final rule to maintain its original intent while addressing the concerns raised by industry. During this time period, the Commercial Airplane Certification Process Study (CPS) also issued its findings about the SDR program. The CPS was chartered by the FAA's Associate Administrator for Regulation and Certification in January 2001 to conduct a comprehensive review of the processes and procedures associated with aircraft certification, operations and maintenance. The CPS identified certain underlying deficiencies in the SDR program that should be corrected so data collected may provide the maximum safety benefit. A copy of the CPS report has been placed in the docket for this rulemaking.

Based on the comments received and the CPS findings, the FAA has determined there is a need to enhance the SDR program so it meets the needs of the FAA and industry more efficiently and effectively. Rather than continuing to delay the effective date of the final rule while we address this issue, we believe it is prudent to withdraw the final rule. This approach will prevent uncertainty about the final rule's status and allows us time to thoroughly evaluate and improve the existing SDR program. The effect of a withdrawal will be the retention of the regulation currently in effect.

The Proposal for Amending the Current Rule

The FAA is also proposing to make several minor changes to the existing SDR program. Most of these changes were already incorporated in the final rule we are now proposing to withdraw; we are proposing to proceed with these changes because they did not receive significant comment and will improve the SDR program.

Sections 121.703, 125.409, and 135.415

The FAA is proposing to rename the titles of §§ 121.703, 125.409, and 135.415 to ''Service Difficulty Reports.'' The existing titles reflect the fact that these reports have been called various names over the years by different parties, resulting in some confusion. This proposed change would reflect the most common industry term for SDRs and result in the eventual use of only one consistently used term when referring to them.

Sections 121.703(d), 125.409(b), and 135.415(d)

The FAA is proposing three changes to improve the process of submitting SDRs to the FAA under these sections:

(1) Replacing the terms ''send,'' ''mailed,'' or ''delivered'' with the term ''submit.'' This change would allow for the use of other means, such as electronic transmission, to submit SDRs to the FAA.

(2) Increasing the time for submitting an SDR from 72 hours to 96 hours after an event occurs that requires an SDR. The increased reporting time gives certificate holders additional time to prepare the SDR and should reduce the number of supplemental SDRs that need to be filed. A reduction of supplemental SDRs should reduce the administrative burden on both the FAA and industry.

(3) Changing the location to which the certificate holder must send SDRs. The current rule requires SDRs to be sent directly to the Certificate Holding District Office (CHDO). There, the SDRs are reviewed by the assigned Principal Maintenance Inspector (PMI) and then forwarded to the FAA offices in Oklahoma City, Oklahoma, where all SDRs are entered into the SDR database. The proposal would require the certificate holder to send SDRs directly to our Oklahoma City offices. The PMI would be instructed by internal agency procedures to review the individual SDR for their assigned certificate holder through an internal FAA computer system that would access the SDR database. This proposal would remove the intermediate step of processing SDRs through the PMI, but not relieve the PMI of the responsibility for reviewing them. The proposed change would also facilitate electronic reporting by eliminating the necessity of delivering a copy to the PMI. The certificate holder would retain the option of submitting paper SDRs should it so choose, although the FAA strongly encourages electronic reporting.

Finally, for only § 135.415, the FAA is proposing to remove the provision for aircraft operated where mail is not collected. This was an old provision that was rarely used by the industry. Mail service is available now in most locations and various alternatives to the U.S. Mail exist.

Section 121.703(e)

The proposal would require certificate holders to submit SDRs in a form or format acceptable to the Administrator. Many operators have voluntarily adopted reporting formats compatible with the FAA's electronic systems to simplify their reporting under the

current rule. Electronic submission of SDRs through the FAA Web site is an acceptable format. This provision is intended to assure that, regardless of the method and format chosen for use, the information we receive is readable. However, when using electronic technology, the electronic language used must be one the FAA is capable of reading.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. Information collection requirements associated with this NPRM have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0663. The proposals in this NPRM do not impose new information collection requirements on certificate holders.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this proposed rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in Department of Transportation Regulatory Policies and Procedures; (2) would not have a ''significant economic impact on a substantial number of small entities;'' (3) would reduce barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket for this rulemaking, are summarized below.

Purpose of This Rulemaking

This proposed rulemaking would withdraw a delayed final rule on Service Difficulty Reports (SDR), but retain several relieving items from that delayed final rule. The FAA is proposing to withdraw the delayed final rule because, after receipt of public comments on that action, the FAA has determined that its cost impact is greater than originally projected.

Total Costs and Benefits of This Rulemaking

Costs

This proposed rule imposes minimal new costs on industry, and results in cost-savings ranging from $16.13 million ($11.33 million, discounted) to $38.96 million ($27.36 million, discounted). This results in a net cost savings to industry ranging from $15.98 million ($11.23 million, discounted) to $38.97 million ($27.37 million, discounted). The impact to the FAA are additional costs of $145,200 ($102,000, discounted) and savings of $9,300 ($6,500, discounted). The FAA has determined this rule to be cost beneficial.

Benefits

Currently, a significant effort is underway to improve the quality of aviation safety data identification and collection. This rulemaking is a component of this effort and proposes changes to improve the existing SDR program. These changes include:

- Extending the reporting time to submit SDRs from 72 hours to 96 hours,
- Requiring certificate holders to submit SDRs directly to a centralized collection point, thus allow the reports to be entered into the SDR database quicker and reduce the administrative workload of the certificate-holding district office (CHDO), and
- Allowing electronic submission of SDR reports.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121, 125, and 135 certificate holders (North American Industry Classification System [NAICS] 481111). For this analysis, the FAA considers each part 125 and 135 certificate holder to be a small entity, and some of the part 121 and 121/135 certificate holders are also small entities.

These regulations result in cost savings for all certificate holders of between $16.13 million ($11.33 million, discounted) to $38.96 million ($27.36 million, discounted) over the next ten years or, on average, between $1.61 million to $3.90 million per year. Assuming that the cost savings is spread among the types of certificate holders in proportion to the number of SDRs each type generated from January 1, 2002 through August 31, 2004, the average part 121 certificate holder would save between $13,010 and $31,424 a year, the average part 121/135 certificate holder would save between $3,511 and $8,479

a year, the average part 125 certificate holder would save between $16 and $39 a year, and the average part 135 certificate holder would save between $68 and $165 a year. Thus, the economic impact is minimal. Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this NPRM and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR parts 121, 125, and 135, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

2. Amend § 121.703 to revise the heading and paragraphs (d) and (e) to read as follows:

§ 121.703 Service difficulty reports.

* * * * *

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period shall be submitted to the collection point within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next work day.

(e) The certificate holder shall submit the reports required by this section on a form or in another format acceptable to the Administrator. The reports shall include the following information:

* * * * *

3. Amend § 121.705 to revise the introductory text to read as follows:

§ 121.705 Mechanical interruption summary report.

Each certificate holder shall submit to the Administrator, before the end of the 10th day of the following month, a summary report for the previous month of:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

4. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

5. Amend § 125.409 to revise the heading and paragraph (b) to read as follows:

§ 125.409 Service difficulty reports.

* * * * *

(b) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period

shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next workday.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. Amend § 135.415 to revise the heading and paragraph (d) to read as follows:

§ 135.415 Service difficulty reports.

* * * * *

(d) Each certificate holder shall submit each report required by this section, covering each 24-hour period beginning at 0900 local time of each day and ending at 0900 local time on the next day, to the FAA offices in Oklahoma City, Oklahoma. Each report of occurrences during a 24-hour period shall be submitted to the FAA within the next 96 hours. However, a report due on Saturday or Sunday may be submitted on the following Monday, and a report due on a holiday may be submitted on the next workday.

* * * * *

Issued in Washington, DC, on September 8, 2005.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 05–18176 Filed 9–13–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
September 14, 2005

Part IV

The President

Proclamation 7926—Minority Enterprise Development Week, 2005

Proclamation 7927—National Historically Black Colleges and Universities Week, 2005

Proclamation 7928—National Days of Prayer and Remembrance, 2005

Proclamation 7929—Patriot Day, 2005

Federal Register
Vol. 70, No. 177
Wednesday, September 14, 2005

Presidential Documents

Title 3—

The President

Proclamation 7926 of September 9, 2005

Minority Enterprise Development Week, 2005

By the President of the United States of America

A Proclamation

Across our country, the entrepreneurial spirit of minority businesses is strong and growing. By creating jobs and advancing opportunities, these businesses improve lives and transform neighborhoods throughout our Nation. During Minority Enterprise Development Week, we recognize minority entrepreneurs and their employees for their commitment to free enterprise and equal opportunity.

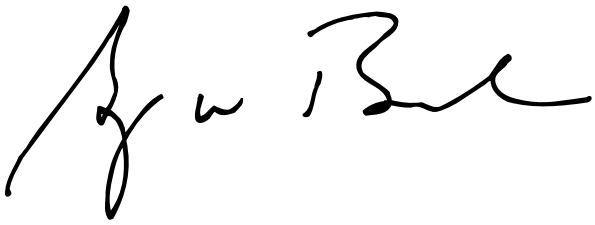
Minority businesses are an essential part of a society in which personal initiative is encouraged and in which opportunity is within the reach of all of our citizens. Significant increases in minority business ownership are providing an engine for economic growth and helping more of our citizens succeed. By fueling job creation and providing goods and services to consumers, these businesses are helping to lift communities and provide hope.

In order to extend the promise of our country to all of our citizens, our economy must continue to grow and expand. My Administration is working to keep taxes low, protect small businesses from needless regulation and frivolous lawsuits, and reduce global trade barriers to open up new markets for American entrepreneurs. We have provided new market tax credits to boost investment and community development in low-income areas, and we are working to stimulate and support minority businesses by providing training and mentoring.

Minority businesses help ensure that our country is a land of opportunity. Their example reflects the best qualities of America, demonstrating that every person has the opportunity to strive for a better future and to take part in the promise of our great Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 11 through September 17, 2005, as Minority Enterprise Development Week. I call upon all Americans to celebrate this week with appropriate programs, ceremonies, and activities to recognize the important contributions of our Nation's minority enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18367
Filed 9–13–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7927 of September 9, 2005

National Historically Black Colleges and Universities Week, 2005

By the President of the United States of America

A Proclamation

America's Historically Black Colleges and Universities are places of learning and achievement that reflect our Nation's belief in the great potential of every student. By upholding high standards of excellence and providing equal educational opportunities to all Americans, these valued institutions help ensure that all our citizens can realize their full potential and look forward to a prosperous and hopeful future.

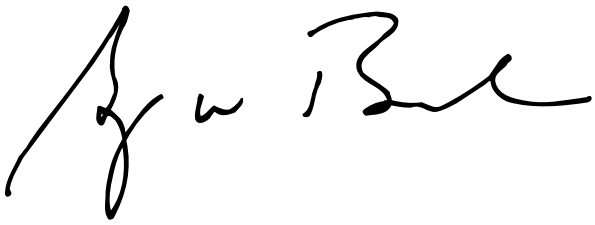
Historically Black Colleges and Universities (HBCUs) are a source of accomplishment and great pride for the African-American community and our entire Nation. By fostering academic achievement, instilling strong values and character, and equipping students with a quality education, they prepare rising generations for success and help fulfill our country's commitment to equal education.

My Administration is committed to supporting HBCUs and making higher education more affordable and more accessible. To ensure that more students have access to a college or university education, I have requested nearly $300 million for HBCUs in my 2006 budget, a record level of funding that would represent an increase in spending for these institutions by 30 percent during my Administration. Through the White House Initiative on Historically Black Colleges and Universities, we are pursuing new ways to strengthen and advance HBCUs through endowments, faculty development, and cooperative research.

America has made significant progress in strengthening our higher education system for all our citizens, and there is more work to do. We continue to strive toward a society in which every person can realize the great promise of America. During National Historically Black Colleges and Universities Week, we recognize the contributions of HBCUs, and we acknowledge and celebrate their role in making America a stronger and better Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 11 through September 17, 2005, as National Historically Black Colleges and Universities Week. I call on public officials, educators, administrators, librarians, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that demonstrate our appreciation for the many contributions these valuable institutions and their graduates have made to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18368
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Presidential Documents

Proclamation 7928 of September 9, 2005

National Days of Prayer and Remembrance, 2005

By the President of the United States of America

A Proclamation

Americans will always remember the terrible events and violent cruelty of September 11, 2001. We will always honor the many innocent lives that were lost, and we will never forget the heroism of passengers, first responders, and others on that day. During this year's National Days of Prayer and Remembrance, we pay tribute to the memory of those taken from us in the terrorist attacks in New York, in Pennsylvania, and at the Pentagon. We pray for the families left behind who continue to inspire us through their steadfast character, courage, and determination.

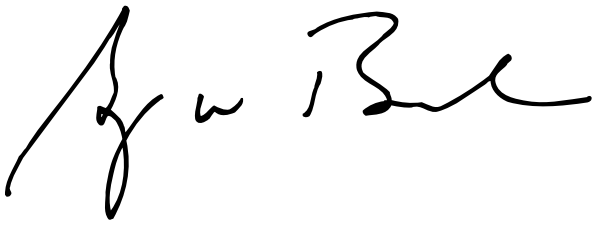
In the time since September 11, 2001, Americans have come together to defend America and advance freedom. We are grateful to our brave men and women in uniform who are making daily sacrifices at home and at posts around the globe, and we pray for their safety as they defend our liberty. In the war on terror, we have lost good men and women who left our shores to protect our way of life and did not live to make the journey home. We honor their memories, and we pray for their families.

The war that began for America on September 11, 2001, continues to call on the courage of our men and women in uniform and the perseverance of our citizens. The past 4 years have brought many challenges and sacrifices, yet we have much reason to be thankful and hopeful about the future. America has become more secure as terrorists have been brought to justice, two of the most brutal and aggressive regimes have ended, and freedom has spread in the Middle East and around the world. In the months and years ahead, we will continue to defend our freedom and lay the foundations of peace for our children and grandchildren.

During these Days of Prayer and Remembrance, we give thanks to the Almighty for our freedom, and we acknowledge our dependence on the Giver of this gift. Four years after September 11, 2001, we remember the lives lost and pray for God's continued blessings on their families and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 9, through Sunday, September 11, 2005, as National Days of Prayer and Remembrance. I ask that the people of the United States and places of worship mark these National Days of Prayer and Remembrance with memorial services and other appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18369
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Presidential Documents

Proclamation 7929 of September 9, 2005

Patriot Day, 2005

By the President of the United States of America

A Proclamation

Four years have passed since our country was brutally attacked on a quiet September morning. On that day, thousands of innocent lives were taken from us. The victims and the families who lost loved ones remain in the hearts and prayers of our Nation. We also remember the courage of the firefighters, police officers, emergency rescue personnel, and scores of private citizens who showed us the true meaning of heroism and demonstrated our resolve to the world.

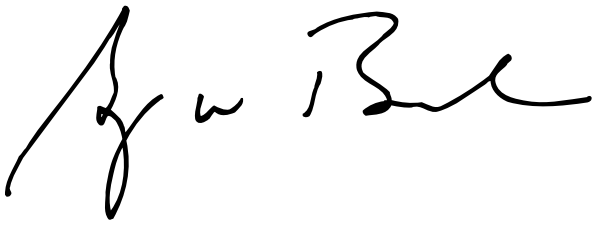
The mission that began on September 11, 2001, continues. Today, we see the virtue of the September 11th heroes embodied in our military personnel, who are taking the fight to our enemies and helping to keep us safe at home. Thousands of other Americans, from intelligence analysts to border guards to countless others, are doing vital work to help defend America and prevent future attacks. We are grateful to all of these men and women and to their families for their service and sacrifice. We honor those who have lost their lives defending our freedom, and we pray that God comfort their families. We pledge that we will not rest until we have won the war on terror.

As we mark this solemn anniversary, I call upon all our citizens to express their patriotism and their gratitude for the blessings of liberty. By flying the flag, supporting military families, and teaching young people about our founding ideals, we honor the lives lost on September 11, 2001, and since, and we help preserve our freedom for future generations.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 11, 2005, as Patriot Day. I call upon the Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Patriot Day. I call upon the people of the United States to observe Patriot Day with appropriate ceremonies and activities, including remembrance services, to display the flag at half-staff from their homes on that day, and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who lost their lives as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18370
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Federal Register

Vol. 70, No. 177

Wednesday, September 14, 2005

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51999–52282 1
52283–52892 2
52893–53042 6
53043–53294 7
53295–53536 8
53537–53722 9
53723–53900 12
53901–54234 13
54235–54468 14

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 8, 2005) 54229
7921 52281
7922 53719
7923 53721
7924 54227
7925 54233
7926 54461
7927 54463
7928 54465
7929 54467

Executive Order:
13223 (See Notice of September 8, 20050 54229
13235 (See Notice of September 8, 20050 54229
13253 (See Notice of September 8, 20050 54229
13286 (See Notice of September 8, 20050 54229

7 CFR

905 54235
946 53723
966 53537
1405 52283

Proposed Rules:
987 53737
1435 53103

8 CFR

Proposed Rules:
Ch. I 52037

9 CFR

310 53043
318 53043

Proposed Rules:
94 ..... 52158, 53313
381 53582

10 CFR

50 52893

Proposed Rules:
1 52942
2 52942
10 52942
19 52942
20 52942
21 52942
25 52942
26 52942
50 52942
51 52942
52 52942
54 ..... 52942, 54310
55 52942
63 53313
72 52942
73 52942
75 52942
95 52942
140 52942
170 52942

12 CFR

611 53901
612 53901
614 53901
615 53901
620 53901

Proposed Rules:
225 53320
XVII 53105

14 CFR

39 ..... 51999, 52001, 52004, 52005, 52009, 52285, 52899, 52902, 53051, 53053, 53056, 53058, 53295, 53540, 53543, 53547, 53550, 53554, 53556, 53558, 53725, 53910, 53912, 53915, 54242, 54244, 54247, 54249, 54251, 54253
61 53560
71 ..... 52012, 52288, 52903, 52905, 53562, 53917, 53918, 53919, 53920, 53921
95 52013
97 52288

Proposed Rules:
39 ..... 52040, 52041, 52043, 52046, 52943, 52945, 52947, 53106, 53586, 53739, 53743, 54311, 54314, 54316, 54318, 54321
71 ..... 53594, 53595, 53597, 53598
121 54454
125 54454
135 54454
382 53108

15 CFR

995 52906

16 CFR

4 53296

17 CFR

242 52014

Proposed Rules:
36 54323
37 54323
38 54323
39 54323
40 54323

18 CFR

Proposed Rules:
38 53117
153 52328
157 52328
375 52328

19 CFR

7 53060
10 53060
11 53060
12 53060
18 53060
19 53060
24 53060
54 53060
101 53060
102 53060
111 53060
114 53060
123 53060
128 53060
132 53060
134 53060
141 53060
145 53060
146 53060
148 53060
151 53060
152 53060
177 53060
181 53060
191 53060

Proposed Rules:
101 52336

20 CFR

Proposed Rules:
404 53323
416 ....52949, 53323

21 CFR

1 53728
189 53063
510 52291
558 52291
700 53063
866 53069

Proposed Rules:
310 52050
880 53326

22 CFR

41 52292
51 53922

Proposed Rules:
Ch. I 52037

23 CFR

1327 52296

24 CFR

891 54200

Proposed Rules:
291 53480
320 54450

26 CFR

1 52299

Proposed Rules:
1 ....52051, 52952, 53599, 53973, 54324
53 53599
301 54324

27 CFR

9 ....53297, 53300

Proposed Rules:
4 53328
24 53328
27 53328

28 CFR

Proposed Rules:
16 53133

29 CFR

1910 53925

Proposed Rules:
1404 53134

30 CFR

938 52916

Proposed Rules:
57 53280
250 52953

31 CFR

575 54258

32 CFR

706 52302

Proposed Rules:
310 53135

33 CFR

100 ....52303, 52305
117 ....52307, 52917, 53070
165 ....52308, 53070, 53562, 54447

Proposed Rules:
100 ....52052, 52054, 52338
117 ....52340, 52343, 53328, 53604

37 CFR

1 54259
3 54259

Proposed Rules:
Ch. III 53973

38 CFR

14 52015
41 52248
49 52248

39 CFR

265 52016

40 CFR

51 53930
52 ....52919, 52926, 53275, 53304, 53564, 53930, 53935, 53936, 53939, 53941, 54267
62 53567
81 52926
124 53420
180 ....53944, 54275, 54281
228 53729
260 53420
261 53420
267 53420
270 53420
300 ....52018, 54286

Proposed Rules:
26 53838
52 ....52956, 52960, 53329, 53605, 53746, 53974, 53975, 54324
62 53615
81 ....52960, 53605, 53746
136 52485
197 54325
300 54327
372 53752

42 CFR

403 52019
414 52930
422 52023

Proposed Rules:
405 52056
410 52056
411 52056
413 52056
414 52056
426 52056

43 CFR

3100 53072
3834 52028

Proposed Rules:
423 54214
429 54214

44 CFR

64 52935
65 ....52936, 52938
67 52939

Proposed Rules:
67 ....52961, 52962, 52976

45 CFR

61 53953
160 54293

46 CFR

Proposed Rules:
531 ....52345, 53330

47 CFR

2 53074
25 53074
64 ....54294, 54298, 54300
73 ....53074, 53078, 54301
76 53076
90 53074
97 53074

Proposed Rules:
Ch. I 53136
64 53137
73 ....53139, 54334

48 CFR

211 53955
212 53955
225 52030
232 52031
237 52032
242 52034
252 ....52030, 52031, 52032, 53716, 53955
1802 52940
1852 52941

Proposed Rules:
9904 53977

49 CFR

571 ....53079, 53569
578 53308
585 53101
588 53569

Proposed Rules:
571 53753

50 CFR

17 ....52310, 52319
32 54146
226 ....52488, 52630
300 52324
648 ....53311, 53580, 53969, 54302
660 52035
679 ....52325, 52326, 53101, 53312, 53970, 53971

Proposed Rules:
17 ....52059, 53139, 53141, 54106, 54335
600 53979
622 ....53142, 53979
635 53146
679 52060
697 52346

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 14, 2005

COMMERCE DEPARTMENT
Patent and Trademark Office
Cooperative Research and Technology Enchacement Act of 2004; implementation; published 9-14-05

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alkyl (C10-C16) polyglycosides; published 9-14-05
Ethylhexyl glucopyranosides; published 9-14-05

HEALTH AND HUMAN SERVICES DEPARTMENT
Health insurance reform:
Health Insurance Portability and Accountability Act of 1996—
Civil money penalties; investigations procedures, penalities imposition, and hearings; expiration date extension; published 9-14-05

PERSONNEL MANAGEMENT OFFICE
E-Government Act of 2002; implementation:
Information Technology Exchange Program; published 8-15-05

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 9-9-05

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
General amendments; published 8-15-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT
Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Tuberculosis in cattle and bison; State and zone designations; New Mexico; comments due by 9-20-05; published 7-22-05 [FR 05-14445]
Whole cuts of boneless beef from—
Japan; comments due by 9-19-05; published 8-18-05 [FR 05-16422]
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications; correction; comments due by 9-20-05; published 8-12-05 [FR 05-16014]

AGRICULTURE DEPARTMENT
Natural Resources Conservation Service
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT
Army Department
Aid of civil authorities and public relations:
Obtaining information from financial institutions; comments due by 9-19-05; published 7-21-05 [FR 05-14212]
Armed forces disciplinary control boards and off-installation liaison and operations; policy revision; comments due by 9-19-05; published 7-20-05 [FR 05-14213]

DEFENSE DEPARTMENT
Acquisition regulations:
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Maine; comments due by 9-19-05; published 8-19-05 [FR 05-16483]
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 9-23-05; published 8-24-05 [FR 05-16803]
Maine; comments due by 9-23-05; published 8-24-05 [FR 05-16814]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Etoxazole; comments due by 9-19-05; published 7-20-05 [FR 05-14284]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Texas; general permit for territorial seas; Open for comments until further notice; published 9-6-05 [FR 05-17614]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Minimum customer account record exchange

obligations on all local and interexchange carriers; implementation; comments due by 9-22-05; published 9-7-05 [FR 05-17704]

Radio stations; table of assignments:

Arizona; comments due by 9-19-05; published 8-17-05 [FR 05-16064]

Florida; comments due by 9-19-05; published 8-17-05 [FR 05-16065]

Indiana; comments due by 9-19-05; published 8-17-05 [FR 05-16074]

Kentucky; comments due by 9-19-05; published 8-17-05 [FR 05-16066]

Louisiana and Texas; comments due by 9-19-05; published 8-17-05 [FR 05-16070]

Texas; comments due by 9-19-05; published 8-17-05 [FR 05-16071]

Wyoming; comments due by 9-19-05; published 8-17-05 [FR 05-16069]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Pollution:

Tank vessels; tank level or pressure monitoring devices; suspension; comments due by 9-19-05; published 7-20-05 [FR 05-14246]

Regattas and marine parades:

Choptank River, MD; comments due by 9-19-05; published 8-29-05 [FR 05-17087]

HOMELAND SECURITY DEPARTMENT

Transportation Security Administration

Civil aviation security:

Ronald Reagan Washington National Airport; enhanced security procedures for certain aircraft operations; comments due by 9-19-05; published 7-19-05 [FR 05-14269]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Migratory bird hunting:

Tungsten-iron-copper-nickel, iron-tungsten-nickel alloy, tungsten-bronze, and tungsten-tin-iron shot approval as nontoxic for waterfowl and coots hunting; comments due by 9-23-05; published 8-24-05 [FR 05-16718]

LABOR DEPARTMENT

Employment and Training Administration

Federal Unemployment Tax Act:

Unemployment compensation; eligibility; comments due by 9-20-05; published 7-22-05 [FR 05-14384]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine and metal and nonmetal mine safety and health:

Asbestos exposure limit; public hearings; comments due by 9-20-05; published 7-29-05 [FR 05-14510]

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:

Cost Accounting Standards Board—

Employee stock ownership plans sponsored by Government contractors; costs accounting; comments due by 9-20-05; published 7-22-05 [FR 05-13951]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

PERSONNEL MANAGEMENT OFFICE

Prevailing rate system; comments due by 9-21-05; published 8-22-05 [FR 05-16593]

PRESIDIO TRUST

Debt collection; comments due by 9-19-05; published 8-4-05 [FR 05-14794]

RAILROAD RETIREMENT BOARD

Railroad Unemployment Insurance Act:

Railroad employers' reconsideration requests; electronic filing; comments due by 9-23-05; published 7-25-05 [FR 05-14227]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 9-21-05; published 8-22-05 [FR 05-16534]

Boeing; comments due by 9-19-05; published 8-23-05 [FR 05-16751]

Bombardier; comments due by 9-21-05; published 8-22-05 [FR 05-16535]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 9-19-05; published 8-18-05 [FR 05-16362]

Empresa Brasileira de Aeronautica S.A.(EMBRAER); comments due by 9-21-05; published 8-22-05 [FR 05-16536]

Grob-Werke; comments due by 9-20-05; published 6-22-05 [FR 05-12152]

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]

LIST OF PUBLIC LAWS

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H.R. 3650/P.L. 109–63

Federal Judiciary Emergency Special Sessions Act of 2005 (Sept. 9, 2005; 119 Stat. 1993)

Last List August 12, 2005

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