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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. 03–048–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables have been eligible for importation under permit, but were not specifically listed in the regulations. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to treatment at the port of first arrival as may be required by an inspector. In addition, some of the fruits and vegetables will be required to be treated or meet other special conditions. We are also recognizing areas in several countries as free from certain fruit flies; adding, modifying, or removing certain definitions; modifying existing treatment requirements for specified commodities; and making other miscellaneous changes. These actions will improve the transparency of our regulations while continuing to protect against the introduction of quarantine pests through imported fruits and vegetables.

EFFECTIVE DATE: December 8, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On March 31, 2005, we published in the **Federal Register** (70 FR 16431–16445, Docket No. 03–048–1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables have been eligible for importation under permit, but were not specifically listed in the regulations. We also proposed to recognize areas in several countries as free from certain fruit flies; add an alternative treatment for specified commodities; provide for the importation of untreated citrus from Mexico for processing under certain conditions; eliminate or modify existing treatment requirements for specified commodities; and to add, modify, or remove certain definitions and make other miscellaneous changes.

We solicited comments concerning our proposal for 60 days ending May 31, 2005. We received 29 comments by that date. They were from representatives of State governments, industry organizations, importers and exporters, producers, scientists, and individuals. Eight of the commenters wrote specifically to support the addition of two new areas of Brazil to the list of localities eligible to export papayas to the United States, and a ninth commenter supported the proposed rule in general. Another commenter wrote to oppose the proposed rule in general, but offered no specific information for our consideration. The remaining comments are discussed below by topic.

Untreated Citrus From Mexico

Several of the commenters raised concerns regarding the proposed provisions that would have allowed the importation of untreated citrus from Mexico into the United States for processing. In order to give us additional time to consider the issues raised by the commenters regarding untreated Mexican citrus without delaying final action on the other aspects of the proposed rule, we will not be finalizing the provisions regarding the importation of untreated citrus from Mexico into the United States for processing in this final rule. We will issue another document in the **Federal Register** in the future regarding the importation of untreated citrus from Mexico into the United States for processing.

Blueberries From South America

Under the regulations in § 319.56–2x, blueberries (*Vaccinium* spp.) from Argentina, Bolivia, Ecuador, and Peru may be imported into the United States provided that they are treated with methyl bromide or irradiation to mitigate the risk presented by the Mediterranean fruit fly (Medfly, *Ceratitis capitata*).

We proposed to remove the treatment requirement for blueberries from those countries based on research and reports indicating that blueberries were not a host for Medfly in South America. In addition, we proposed to add Colombia, a country where Medfly is present, to the list of countries eligible to export blueberries to the United States. The pest risk assessment we prepared with regard to the importation of blueberries from Colombia concluded that there are no quarantine pests associated with blueberries from Colombia that are likely to follow the import pathway (although Medfly is present in Colombia, the pest risk assessment reflected the research and reports indicating that blueberries were not a host for Medfly in South America). Therefore, we proposed to allow blueberries to be imported from Colombia without treatment.

In response to our proposed rule, we received several comments indicating that there is a credible possibility that blueberries are in fact a host for Medfly in South America. Among the commenters were several South American blueberry producers who urged us to delay final action regarding the Medfly host status of blueberries until additional research can be conducted. These commenters stated they wished to avoid the market disruptions that would occur if blueberries were imported into the United States without treatment and

subsequently found to be infested with Medfly.

Based on these comments, we have decided not to finalize our proposed removal of the treatment requirement for blueberries from Argentina, Bolivia, Ecuador, and Peru. With respect to blueberries from Colombia, this final rule will authorize their importation under § 319.56–2x (*i.e.*, as a commodity enterable with treatment) rather than under § 319.56–2t as we had proposed. We believe that the pest risk assessment prepared for blueberries from Colombia still provides a basis for allowing their entry; however, our change in approach with respect to the Medfly host status of blueberries necessitates that the fruit be treated as a condition of entry. The treatment for blueberries from Colombia will be the same as for blueberries from Argentina, Bolivia, Ecuador, and Peru, *i.e.*, fumigation with methyl bromide or irradiation; this final rule also amends the list of treatments in § 305.2(h)(2)(i) of the phytosanitary treatments regulations to indicate the applicability of those treatments.

We intend to work with the Department's Agricultural Research Service on studies that will allow us to determine with greater certainty the Medfly host status of blueberries in South America as well as research into the efficacy of alternatives, such as cold treatment, to methyl bromide fumigation and irradiation.

One commenter stated he was interested in knowing which data sources were used to determine the pest status of blueberries in Colombia and whether or not that information will be considered prior to these blueberries entering the United States.

As mentioned previously, we did prepare a pest risk assessment relative to the importation of blueberries from Colombia. That risk assessment, titled ''Importation of Fresh Blueberry (*Vaccinium* spp.) into the Continental United States from Colombia,'' was made available to the public in the proposed rule. The pest risk assessment cites the sources of the data used in the document and was, as noted above, considered in the preparation of the proposed rule and this final rule.

Root Crops From Mexico and China

We proposed to add Swiss chard (*Beta vulgaris* var. *cicla*) from Mexico and ginger root (*Zingiber officinale*) from China to the list in § 319.56–2t of fruits and vegetables that may be imported into the United States in accordance with the inspection and disinfection requirements of § 319.56–6 and all other applicable requirements of the regulations. The proposed admissible plants parts were ''whole plant'' for Swiss chard from Mexico and ''root'' for ginger root from China. We noted that both of these commodities have been imported into the United States under permit since before 1992 and that their addition to the list in § 319.56–2t would serve to improve the transparency of our regulations.

One commenter stated that the potato pathotype of the false root-knot nematode (*Nacobbus aberrans*) is of concern with regard to Swiss chard imported from Mexico. The false root-knot nematode is a quarantine pest present in Mexico and is known to infest Swiss chard.

In response to this comment, this final rule provides that the admissible plant parts of Swiss chard from Mexico will be leaves and stem, rather than the whole plant as we proposed. Since the false root-knot nematode only infests the roots of Swiss chard and other plants and is not known to be carried in either the leaves or stem in trade or transport, this measure will be sufficient to prevent the introduction of false root-knot nematode in shipments of Swiss chard from Mexico.

The same commenter further stated that ginger root from China is an excellent host of the burrowing nematode (*Radopholus similis*) and root-knot nematodes of the genus *Meloidogyne*, and that root-knot nematode species that attack citrus are present in China and may infest ginger root as well. The commenter stated that evidence of infestation by such nematodes is more difficult to detect than evidence of arthropod infestation.

A review of our port interception records for the past 20 years reveals seven interceptions of root-knot nematodes in ginger root. Those interceptions were made in shipments from Jamaica, Haiti, Thailand, and Korea. There have been no interceptions of root-knot nematodes in ginger root from China.

Furthermore, both the burrowing nematode and root-knot nematodes exhibit symptoms that are macroscopic and detectable upon visual inspection. Specifically:

- Infestation by burrowing nematodes is evidenced by small, shallow, sunken, water-soaked lesions on the root.
- Root-knot nematodes cause galling of the root system which is often accompanied by a proliferation of small roots at the site of the gall.

Our interception records coupled with these macroscopic symptoms of infestation lead us to believe that port of entry inspection is adequate to mitigate the risk posed by burrowing nematode and root-knot nematodes in ginger root from China.

Finally, the commenter recommended that a complete risk analysis be conducted with regard to the possible introduction of these nematodes with commodities from Mexico and China.

As noted previously and in the proposed rule, both of these commodities have been enterable under permit since before 1992. Before those permits were issued, APHIS staff assessed the risk associated with each commodity and documented the results of that assessment in a decision sheet,[1] which was the reporting tool we used before we began routinely preparing pest risk assessments according to the guidelines provided by the Food and Agriculture Organization and the North American Plant Protection Organization. Given that we have already assessed the risks associated with the two commodities and numerous subsequent inspections of consignments of those commodities from Mexico and China have yielded no interceptions of quarantine pests, we do not believe an additional risk analysis is necessary.

Papaya From Brazil and Nicaragua

The regulations in § 319.56–2w provide that papayas from certain areas in Central America and Brazil may be imported into the United States if they are grown, treated, packed, labeled, and shipped according to certain specifications to prevent the introduction of fruit flies into the United States. Papayas from those areas listed in § 319.56–2w(a) may be imported into the United States only if they meet a series of 10 conditions which we have determined to be sufficient to prevent the introduction of fruit flies into the United States (those conditions can be found in paragraphs (b) through (k) of § 319.56–2w). We proposed to amend § 319.56–2w(a) by adding two new areas of Brazil and one new area of Nicaragua to the list of localities eligible to export papayas to the United States.

One commenter stated that Medfly and South American fruit fly (*Anastrepha fraterculus*) are present in Brazil and Medfly is present in Nicaragua, and that both pests are known to attack papaya. The commenter stated that before he could endorse the proposal to allow papaya from Brazil and Nicaragua to be imported into the United States, he would like the opportunity to review the 10 conditions

[1] Decision sheets contain relatively the same information that is contained in modern pest risk assessments, but without the standardized format.

under which fruit will be acceptable as uninfested.

As noted above and in the proposed rule, the 10 conditions can be found in paragraphs (b) through (k) of the regulations § 319.56–2w. Those provisions were added to the regulations in March 1998 and have been successfully used since that time to provide for the importation of papayas from various countries in Central America and South America.

Citrus From the Dominican Republic

We proposed to add several citrus fruits (grapefruit, lemon, orange, sour lime, and tangerine) from the Dominican Republic to the list in § 319.56–2t of fruits and vegetables that may be imported into the United States in accordance with the inspection and disinfection requirements of § 319.56–6 and all other applicable requirements of the regulations. As is the case with the Swiss chard and ginger discussed earlier in this final rule, those citrus fruits have been imported into the United States under permit since before 1992 and their addition to the list in § 319.56–2t would serve to improve the transparency of our regulations.

One commenter noted that the State of California maintains an exterior quarantine and an ongoing detection program for Caribbean fruit fly (*Anastrepha suspensa*), a pest known to occur in the Dominican Republic. The commenter noted that an approved and certified treatment is necessary to prevent host fruit infested with Caribbean fruit fly from entering California and asked that APHIS recognize this special local need when developing its final rule.

Under the International Plant Protection Convention (IPPC), to which the United States is a signatory, and our regulations in § 319.56, a quarantine pest is defined as ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' Caribbean fruit fly is present in Florida, where a State protocol provides for the establishment of specific *A. suspensa* controlled areas (designated areas) from which fresh fruits may be certified for export. However, that protocol is not currently regarded as an official control program and APHIS does not consider Caribbean fruit fly to be a quarantine pest. Therefore, we do not regulate imports of citrus from the Dominican Republic to protect against entry of this pest.

Medfly-Free Area in Argentina

We proposed to recognize the Patagonia region of Argentina as free of Medfly and *Anastrepha* spp. fruit flies. The Patagonia region includes those areas along the valleys of the Rio Colorado and Rio Negro rivers and includes the provinces of Neuquen, Rio Negro, Chubut, Santa Cruz, and Tierra del Fuego.

One commenter, apparently believing that this aspect of the proposal was limited to recognizing only Medfly-free areas, asked if the Patagonia region was also free of South American fruit fly (*Anastrepha fraterculus*). The commenter stated that if this has not been verified, he would recommend that this aspect of the proposal not be finalized.

In the proposed rule, we explained that Argentina had provided us with fruit fly survey data that demonstrates that the Patagonia region meets the criteria of § 319.56–2(f) for area freedom from Medfly and other fruit flies (*i.e., Anastrepha* spp. fruit flies). Those survey data were made available for review in the proposed rule. We also explained that, through site visits by APHIS officials, we had successfully verified this area's status as a fruit fly-free zone. In response to the commenter's specific question, we have verified that the Patagonia region of Argentina is free of South American fruit fly.

On the same subject, another commenter stated that carving out a Medfly-free area within a pest-infested area is questionable, given that pests do not read signs nor do they understand boundaries. The commenter further maintained that the Argentine Government has a history of not reporting pests or disease issues in a timely manner.

As noted above, the fruit fly-free status of the Patagonia region was demonstrated through survey data provided by the Argentine Government and verified during site visits by APHIS officials. Through those means, we determined that the Patagonia region of Argentina meets the criteria of § 319.56–2(f) for area freedom from Medfly and *Anastrepha* spp. fruit flies. Under § 319.56–2(f), the Administrator determines that an area is free of a pest or pests in accordance with the criteria for establishing freedom found in International Standard for Phytosanitary Measures Publication No. 4, ''Requirements for the Establishment of Pest Free Areas.'' That international standard was established by the IPPC and is incorporated by reference into our regulations. APHIS must approve the survey protocol used to determine pest-free status, and pest-free areas are subject to audit by APHIS to verify their status. We would hope that the active involvement of APHIS in approving survey protocols and auditing pest-free areas would allay the commenter's misgivings about the Argentine Government's reporting history.

Inspection Capabilities

Two commenters raised concerns related to the transfer of port inspection responsibilities from APHIS to the Department of Homeland Security's (DHS) Bureau of Customs and Border Protection (CBP). These commenters stated that staffing levels for pest exclusion programs were too low, that there had not been sufficient pest exclusion training provided for those CBP personnel who came from agencies other than APHIS, and that CBP inspectors are more focused on security issues than phytosanitary inspection. The commenters stated that these issues must be addressed before APHIS issues new regulations that could overwhelm what they perceive to be an already weakened system.

With respect to staffing levels, there was an initial drop in the number of inspectors following the transfer of port inspection responsibilities from APHIS to DHS in June 2003: APHIS transferred 1,507 agriculture inspectors to DHS, but by October 2004, the number of inspectors had decreased to 1,452. However, the loss of those 55 inspectors was more than offset by February 2005, at which time 109 new agricultural specialists had completed New Officer Training and were working at ports of entry. In addition, DHS has approved 14 training classes for new officers which began in the summer of 2004 and will continue through January 2006. DHS estimates that these training classes will result in a total of 720 new officers.

With respect to training, there was a need to provide pest exclusion training to those Immigration and Naturalization Service, U.S. Border Patrol, and U.S. Customs Service personnel who were transferred to CBP, just as the mission of CBP dictated the need to provide cross-training in other specialties to those APHIS personnel who were transferred to CBP. Planning and delivering training for all these personnel necessarily had to be accomplished over time, but all CBP inspection personnel have now been fully and satisfactorily trained in pest exclusion.

Finally, security issues are certainly a focus for CBP personnel, but that does not come at the expense of phytosanitary inspections. While CBP

conducts a majority of inspections of agricultural commodities at the ports of first arrival, inspectors follow established and effective APHIS protocols regarding inspection rates and procedures. APHIS continues to work with CBP to ensure that the United States is protected against pests of concern that may be associated with agricultural imports.

Market Access

One commenter stated that APHIS must do more to provide market access to developing nations. To that end, the commenter suggested that APHIS should create pre-approval locations overseas, which the commenter stated CBP has already done, and allow returning travelers to bring pre-screened fruits and vegetables back to the United States with them. APHIS could then approve or discard the items and issue permits on the spot, which the commenter stated CBP is already doing.

It appears that the commenter is unclear regarding the respective roles of APHIS and CBP in the scenario he describes. CBP has the primary responsibility for agricultural inspections at ports of entry, not APHIS, and it appears that the commenter is satisfied with CBP's approach to travelers returning to the United States with fruits or vegetables. There is no need—nor is there any authority—for APHIS to establish a parallel system.

The same commenter stated that APHIS should guarantee market access to fruit and vegetable producers in developing countries.

We cannot guarantee blanket access to the U.S. market to producers in any country. In order to maintain the safeguards necessary to protect American agriculture, we must first assess the phytosanitary risks associated with the importation of a particular fruit or vegetable from a potential exporting country. Only after such an assessment would we be able to make a decision to allow the importation of that commodity.

Other Changes in This Final Rule

We proposed to remove the specific treatment schedules presented in §§ 319.56–2k(d), 319.56–2m(b), and 319.56–2n(b) and replace them with references to the Plant Protection and Quarantine (PPQ) Treatment Manual. Those schedules were found in both the regulations and the PPQ Treatment Manual, so our proposed changes were intended to eliminate that duplicative presentation. Since the proposed rule was published, however, we have moved those treatment schedules out of the PPQ Treatment Manual and into the regulations in 7 CFR part 305. Therefore, where the proposed rule would have added a reference to the PPQ Treatment Manual, this final rule adds a reference to 7 CFR part 305.

In § 319.56–2x, the entries we proposed to add under Argentina all included the statement ''Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in a Medfly-free area (see § 319.56–2(j)).'' As indicated in the table of treatments in § 305.2(h)(2)(i), the fruits we proposed to add are treated for species of *Anastrepha* (other than *A. ludens*) in addition to Medfly. As discussed earlier in this document, we are amending § 319.56–2(j) to recognize the Patagonia region of Argentina as free of Medfly and *Anastrepha* spp. fruit flies. Therefore, in § 319.56–2x in this final rule, the entries we are adding under Argentina include the more accurate statement ''Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).'' Because we will not be removing the entry for blueberries from Argentina from § 319.56–2x as we had proposed, we have amended that entry to include a statement that treatment for Medfly is not required if the fruit is grown in a fruit fly-free area listed in § 319.56–2(j).

Also in § 319.56–2x, in the entry for Israel, we proposed to change the common name for ''cactus'' to ''tuna.'' The proposed new entry for tuna included a statement that treatment for Medfly is not required if the fruit is grown in a Medfly-free area listed in § 319.56–2(j). However, there are no Medfly-free areas of Israel listed in § 319.56–2(j), so that statement does not appear in this final rule.

We proposed to amend § 319.56–2c by removing a reference to the Deputy Administrator of PPQ and adding a reference to the Administrator in its place. After the proposed rule was published, § 319.56–2c was revised by another rule and the change we had proposed is no longer necessary.

Finally, the additional restrictions in § 319.56–2t(b)(1)(ii) have referred to Medfly-free areas listed in § 319.56–2(j). Because this rule amends § 319.56–2(j) to list areas of Argentina that are free of both Medfly and *Anastrepha* spp. fruit flies, we have amended paragraph (b)(1)(ii) in § 319.56–2t so that it uses the more generic term ''fruit-fly free areas.''

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

This rule relieves restrictions on the importation of certain fruits and vegetables from certain countries while continuing to protect against the introduction of plant pests into the United States. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Making this rule effective immediately will allow interested producers, importers, shippers, and others to benefit immediately from the relieved restrictions. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

This final rule amends the fruits and vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. Many of these fruits and vegetables have been eligible for importation under permit, but were not specifically listed in the regulations. This final rule also recognizes areas in several countries as free from certain fruit flies; adds, modifies, or removes certain definitions; modifies existing treatment requirements for specified commodities; and makes other miscellaneous changes.

We have used all available data to estimate the potential economic effects of allowing the fruits and vegetables specified in this rule to be imported into the United States. However, some of the data we believe would be helpful in making this determination have not been available. Specifically, data are not available on: (1) The quantity of certain fruits and vegetables produced domestically; (2) the quantity of potential imports; and (3) the degree to

which imported fruits and vegetables will displace existing imported or domestic products. In our proposed rule, we asked the public to provide such data for specific commodities. In addition, we invited the public to comment on the potential effects of the proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. However, we did not receive any additional information or data in response to those requests.

Effects on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. Data on the number and size of U.S. producers of the various commodities proposed for importation into the United States in this document are not available. However, since most fruit and vegetable farms are small by Small Business Administration standards, it is likely that the majority of U.S. farms producing the commodities listed below are small.

As discussed in the proposed rule and in this final rule, many of the commodities listed in this document may currently enter the United States under permit. Therefore, we do not expect the amount of commodities submitted for importation to increase beyond current levels. Additionally, in many cases, importation of certain commodities is necessary given that the commodities are not grown extensively in the United States (*e.g.*, bananas, breadfruits, cassavas, chicory, dasheens, genip, kiwis, papayas, pineapples, jicama, and tomatillos). In other instances, importation augments domestic supplies that are not sufficient to meet consumer demand (*e.g.*, apples, blackberries, blueberries, carrots, cherries, cucumbers, garlic, onions, pears, raspberries, and strawberries). We believe that the economic effects of this rule in general will be small, and that the benefits that will accrue to consumers from greater trade will outweigh the costs to domestic producers.

With respect to those articles for which we have specific data, the potential economic effects of this final rule are discussed below by commodity and country of origin.

Blueberries from Colombia. The United States is the world's largest producer of blueberries, supplying more than half of the world's production. Maine and Michigan account for more than half of all U.S. domestic blueberry production. According to the 1997 Census of Agriculture, there were 637 farms in Maine and 623 farms in Michigan harvesting blueberries. (The 2002 Census of Agriculture does not provide information on the number or location of blueberry farms.) Average annual U.S. production, imports, and exports of blueberries for the period 2000–2003 were 123,832 metric tons (MT), 20,820 MT, and 18,933 MT, respectively (*http://faostat.fao.org*).

Demand for blueberries in the United States has generally been on the rise: Per capita fresh blueberry consumption averaged 0.20 pound annually during the early 1990s and increased to 0.34 pound during 2000–2003. Imports have provided U.S. consumers access to fresh blueberries at retail grocery stores during the domestic off-season.

There are no official data available on blueberry production or trade by Colombia. Colombia has never exported blueberries to the United States before. However, a prospective Colombian exporter has projected blueberry exports to the United States over the next 6 years (table 1). Based on these numbers, Colombia could export 10.2 metric tons of blueberries to the United States in 2006, an amount equal to 0.05 percent of average annual U.S. imports during the period 2000–2003 of 20,820 MT. The same set of projections indicates that blueberry imports from Colombia could increase to about 251 MT per year by 2011, which would represent 1.2 percent of U.S. annual imports, 2000–2003. We do not expect that the economic effects resulting from imports at those levels would be substantial.

TABLE 1.—PROJECTED COLOMBIAN EXPORTS OF BLUEBERRIES TO THE UNITED STATES

Year	Volume
2006	10.20 MT
2007	30.00 MT
2008	60.00 MT
2009	102.00 MT
2010	135.00 MT
2011	250.80 MT

Papayas from Brazil and Central America. We are listing two additional growing areas in Brazil (the States of Bahia and Rio Grande del Norte) and one additional area in Nicaragua (the Department of Leon) as eligible to export papayas into the United States. Brazil is currently eligible to export papayas into the United States from the State of Espirito Santo. Nicaragua is currently eligible to export papayas into the United States from the Departments of Carazo, Granada, Managua, Masaya, and Rivas.

Papaya production levels in the United States are small, with a majority of papaya production occurring in Florida. Between 2000 and 2003, Brazil represented, on average, 9 percent of the total U.S. imports of papayas. The addition of two more Brazilian States to the list of areas eligible for export is expected to increase the Brazilian share in the U.S. market for imported papayas. Brazil is a major producer of papayas, however only 1.6 percent of its production is exported. The rest is reserved for domestic consumption.

The United States imports four times the amount of papayas produced domestically, while, as stated previously, the amount of Brazilian papayas imported into the United States accounts for, on average, 9 percent of the total U.S. imports of papayas. Even if Brazil greatly increases its exports to the United States, it is more likely to displace other countries' shares of total U.S. imports than to affect the overall level of U.S. consumption. The economic impact resulting from this change will not be substantial.

There are no official production data available for papayas produced in Nicaragua. However, the existing trade data show that Nicaragua has historically exported papayas very sporadically. For example, between 1997 and 2001, Nicaragua did not export any papayas. In 2002, 203 metric tons were exported to the world; the following year, 18 metric tons were exported. Nicaragua did not export any papayas to the United States over that time period despite the fact that there are five approved exporting regions in Nicaragua. Therefore, the addition of one more eligible exporting area to the list should not have any substantial impact on the U.S. papaya market.

Fruit Fly Free Areas. We are allowing fruits to be imported into the United States from a new Medfly-free area in Argentina. We have determined that the Patagonia region of Argentina is free of those pests. The Patagonia region includes those areas along the valleys of the Rio Colorado and Rio Negro rivers and includes the provinces of Neuquen, Rio Negro, Chubut, Santa Cruz, and Tierra del Fuego.

Fruits from Argentina (apple, apricot, cherry, kiwi, nectarine, peach, pear, plum, pomegranate, and quince) are already admissible into the United States under permit from Argentina. The creation of a Medfly-free area would lessen certain treatment requirements, thus lowering the cost for exporters. This may, in turn, result in a lower cost

for consumers. Further, as a country in the Southern Hemisphere, Argentina's growing seasons are the opposite of those in the United States. An increased supply of Argentine fruit supplements the U.S. winter fruit market. However, we do not anticipate that this potentially increased supply will be large enough to have any substantial impact on small entities.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This final rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0264.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service 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. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, under Colombia, an entry for blueberry, in alphabetical order, to read as follows.

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule[1]
* * * * * * *			
Colombia			
* * * * * * *			
	Blueberry	*Ceratitis capitata*	MB T101–i–1–1.
* * * * * * *			

[1] Treatment by irradiation in accordance with § 305.31 may be substituted for other approved treatments for the mango seed weevil *Sternochetus mangiferae* (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus*, *A. ludens*, *A. obliqua*, *A. serpentina*, *A. suspensa*, *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *B. jarvisi*, *B. latifrons*, and *Ceratitis capitata*.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56 [Amended]

■ 4. Section 319.56 is amended as follows:

■ a. In paragraph (c), by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the word ''Administrator'' in their place.

■ b. By removing paragraphs (d) and (e).

■ 5. Section 319.56–1 is amended as follows:

■ a. By removing the definitions for *Deputy Administrator, fresh fruits and vegetables*, and *plants or portions of plants*.

■ b. By adding, in alphabetical order, new definitions for *Administrator*, *APHIS*, *fruits and vegetables*, *import and importation*, *plant debris* and *United States* to read as set forth below.

■ c. By revising the definitions for *cucurbits*, *inspector*, and *port of first arrival* to read as set forth below.

§ 319.56–1 Definitions.

* * * * *

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

* * * * *

Cucurbits. Any plants in the family Cucurbitaceae.

* * * * *

Fruits and vegetables. A commodity class for fresh parts of plants intended for consumption or processing and not for planting.

* * * * *

Import and importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this subpart.

* * * * *

Plant debris. Detached leaves, twigs, or other portions of plants, or plant litter or rubbish as distinguished from approved parts of clean fruits and vegetables, or other commercial articles.

Port of first arrival. The first point of entry into the United States where the consignment is offered for entry.

* * * * *

United States. All of the States of the United States, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

■ 6. Section 319.56–2 is amended as follows:

■ a. In paragraph (a), by removing the words ''plants or portions of plants''and adding the words ''plant debris'' in their place.

■ b. By revising paragraph (g) to read as set forth below.

■ c. By revising paragraph (j) to read as set forth below.

§ 319.56–2 Restrictions on entry of fruits and vegetables.

* * * * *

(g) Each box of fruit or vegetables imported into the United States in accordance with paragraphs (e) or (f) of this section must be safeguarded from infestation while in transit to the United States through any area that has not been designated as free from quarantine pests that attack the fruit or vegetable. Each box of fruit or vegetables imported into the United States in accordance with paragraphs (e)(3) or (4) and (f) of this section must be clearly labeled with:

(1) The name of the orchard or grove of origin, or the name of the grower, and

(2) The name of the municipality and State in which it was produced, and

(3) The type and amount of fruit it contains.

* * * * *

(j) The Administrator has determined that all Districts in Belize, all provinces in Chile except Arica, and the Department of Petén in Guatamala meet the criteria of paragraphs (e) and (f) of this section with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata* [Wiedemann]). Also, the Patagonia region of Argentina, including those areas along the valleys of the Rio Colorado and Rio Negro rivers and also including the provinces of Neuquen, Rio Negro, Chubut, Santa Cruz, and Tierra del Fuego, has been determined to meet the criteria of paragraphs (e) and (f) of this section with regard to Medfly and Anastrepha spp. fruit flies. Fruits and vegetables otherwise eligible for importation under this subpart may be imported from these areas without treatment for the specified pests.

* * * * *

§ 319.56–2d [Amended]

■ 7. Section 319.56–2d is amended as follows:

■ a. In paragraphs (b)(5)(v)(F), (b)(5)(vi)(G), and (b)(5)(vii)(K), by removing the word ''Deputy''.

■ b. In paragraphs (b)(7)(i) and (c), by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the word ''Administrator'' in their place.

§ 319.56–2g [Amended]

■ 8. In § 319.56–2g, the introductory text of paragraph (b)(1) is amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the word ''Administrator'' in their place.

■ 9. In § 319.56–2j, footnote 4 is revised to read as follows:

§ 319.56–2j Conditions governing the entry of apples and pears from Australia (including Tasmania) and New Zealand.[4]

■ 10. Section 319.56–2k is amended as follows:

■ a. By revising the introductory text of the section to read as set forth below.

■ b. By revising paragraph (a) to read as set forth below.

■ c. In paragraph (d), by removing the words ''the following fumigation schedule:'' and adding the words ''part 305 of this chapter.'' in their place, and by removing the subsequent table.

■ d. In paragraph (g), by removing the words ''The treatment prescribed in paragraph (d) of this section is'' and adding the words ''The treatments prescribed in part 305 of this chapter are'' in their place.

§ 319.56–2k Administrative instructions prescribing method of fumigation of field-grown grapes from specified countries.

Approved fumigation with methyl bromide at normal atmospheric pressure, in accordance with part 305 of this chapter, is hereby prescribed as a condition of entry under permit for all shipments of field-grown grapes from the continental countries of Asia, Europe, North Africa, and the Near East listed in paragraph (a) of this section. This fumigation shall be in addition to other conditions of entry for field-grown grapes from the areas named.

(a) *Continental countries of Asia, Europe, North Africa, and the Near East.* The term ''continental countries of Asia, Europe, North Africa, and the Near East'' means Algeria, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cyprus, Egypt, Estonia, France, Georgia, Germany, Greece, Hungary, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Portugal, Republic of Moldova, Russian Federation, Spain, Switzerland, Syria, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

* * * * *

§ 319.56–2l [Amended]

■ 11. In § 319.56–2l, paragraph (b)(2)(ii) is amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' both times they appear and adding the word ''Administrator'' in their place.

§ 319.56–2m [Amended]

■ 12. Section 319.56–2m is amended as follows:

■ a. In the introductory text of the section, by removing the words ''the following procedure'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (b), by removing the words ''the following schedule:'' and adding the words ''part 305 of this chapter.'' in their place, and by removing the subsequent table.

■ c. In paragraph (e), by removing the words ''paragraph (b) of this section'' and adding the words ''part 305 of this chapter'' in their place.

§ 319.56–2n [Amended]

■ 13. Section 319.56–2n is amended as follows:

■ a. In the introductory text of the section, by removing the words ''the procedures described in this section'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In the introductory text of paragraph (b), by removing the words ''the following table:'' and adding the words ''part 305 of this chapter.'' in their place and by removing the subsequent table.

■ c. By removing paragraphs (b)(1) and (b)(2).

[4] Apples and pears from Australia (excluding Tasmania) where certain tropical fruit flies occur are also subject to the irradiation requirements of part 305 of this chapter or the cold treatment requirements of § 319.56–2d.

§ 319.56–2p [Amended]

■ 14. In § 319.56–2p, paragraph (b)(7) is amended by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and adding the word ''Administrator'' in their place.

■ 15. Section 319.56–2t is amended as follows:

■ a. In the table in paragraph (a), by revising the entry for jicama from Mexico and by adding, in alphabetical order, entries for the following fruits and vegetables to read as set forth below: Under Argentina, for allium, apple, apricot, cherry, kiwi, nectarine, peach, pear, plum, pomegranate, and quince; under Belgium, for cichorium; under Belize, for pepper; under Chile, for apple, asparagus, avocado, blackberry, cherry, pear, and raspberry; under China, for ginger root; under Colombia, for banana; under Costa Rica, for banana, carrot, and cucurbit; under Dominican Republic, for avocado, banana, breadfruit, cassava, celeriac, citrus, cucurbit, dasheen, genip, papaya, pepper, and pineapple; under Ecuador, for pineapple; under Guatemala, for banana, cichorium, cucurbit, and okra; under Honduras, for cucurbit and okra; under Israel, for basil; under Jamaica, for cucurbit and papaya; under Mexico, for artichoke, globe; artichoke, Jerusalem; basil, blackberry, celery, cichorium, dill, lettuce, oregano, pepper, raspberry, spinach, strawberry, Swiss chard, and tomatillo; under Netherlands, for cichorium, cucurbit, and eggplant; under Nicaragua, for banana and dasheen; under Panama, for cucurbit; under Peru, for banana; under Spain, for cucurbit and lemon; and under Trinidad and Tobago, for cucurbit.

■ b. By adding to the table in paragraph (a) new entries for ''Brazil'' and ''Venezuela'' read as set forth below.

■ c. In paragraph (b)(1)(ii), by removing the words ''Medfly-free'' both times they appear and adding the words ''fruit-fly free'' in their place.

■ d. By adding a new paragraph (b)(6) to read as set forth below.

■ e. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
Argentina	Allium	*Allium* spp	Whole plant.	
	Apple	*Malus domestica*	Fruit	(b)(1)(ii)
	Apricot	*Prunus americana*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Cherry	*Prunus avirum, P. cerasus*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Kiwi	*Actinidia deliciosa*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Nectarine	*Prunus persica* var. *nucipersica*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Peach	*Prunus persica* var. *persica*	Fruit	(b)(1)(ii)
	Pear	*Pyrus communis*	Fruit	(b)(1)(ii)
	Plum	*Prunus domestica* subsp. *domestica*	Fruit	(b)(1)(ii)
	Pomegranate	*Punica granatum*	Fruit	(b)(1)(ii)
	Quince	*Cydonia oblonga*	Fruit	(b)(1)(ii)
*	*	*	*	*
Belgium	Cichorium	*Cichorium* spp	Above ground parts	(b)(6)(i)
*	*	*	*	*
Belize				
*	*	*	*	*
	Pepper	*Capsicum* spp	Fruit	(b)(6)(ii)
*	*	*	*	*
Brazil	Dasheen	*Colocasia esculenta*	Whole plant.	
	Ginger root	*Zingiber officinale*	Root.	
Chile				
*	*	*	*	*
	Apple	*Malus domestica*	Fruit	(b)(1)(ii)
	Asparagus	*Asparagus officinalis*	Whole plant.	
	Avocado	*Persea americana*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Blackberry	*Rubus* spp	Fruit.	
	Cherry	*Prunus avium, P. cerasus*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Pear	*Pyrus communis*	Fruit	(b)(1)(ii)
*	*	*	*	*
	Raspberry	*Rubus* spp	Fruit.	

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
*	*	*	*	*
China				
*	*	*	*	*
	Ginger root	*Zingiber officinale*	Root.	
Colombia	Banana	*Musa* spp	Leaf and fruit.	
*	*	*	*	*
Costa Rica	Banana	*Musa* spp	Leaf and fruit.	
*	*	*	*	*
	Carrot	*Daucus carota* ssp *sativus*	Whole plant.	
*	*	*	*	*
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
Dominican Republic	Avocado	*Persea americana*	Fruit.	
*	*	*	*	*
	Banana	*Musa* spp	Fruit.	
	Breadfruit	*Artocarpus altilis*	Fruit.	
	Cassava	*Manihot esculenta*	Root.	
	Celeriac	*Apium graveolens* var. *dulce*	Whole plant.	
	Citrus	*Citrus* spp	Fruit	(b)(6)(iii)
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
	Dasheen	*Colocasia esculenta*	Whole plant.	
*	*	*	*	*
	Genip	*Melicoccus bijugatus*	Fruit.	
	Papaya	*Carica papaya*	Fruit	(b)(2)(iii)
	Pepper	*Capsicum* spp	Fruit.	
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(iii)
Ecuador				
*	*	*	*	*
	Pineapple	*Ananas comosus*	Fruit	(b)(2)(iii)
*	*	*	*	*
Guatemala				
*	*	*	*	*
	Banana	*Musa* spp	Leaf and fruit.	
*	*	*	*	*
	Cichorium	*Cichorium* spp	Above ground parts	(b)(6)(i)
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
	Okra	*Abelmoschus esculentus*	Pod.	
*	*	*	*	*
Honduras				
*	*	*	*	*
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
	Okra	*Abelmoschus esculentus*	Pod.	
*	*	*	*	*
Israel				
*	*	*	*	*
	Basil	*Ocimum* spp	Above ground parts	
*	*	*	*	*
Jamaica	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
	Papaya	*Carica papaya*	Above ground parts	(b)(2)(iii), (b)(3)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
*	*	*	*	*
Mexico				
*	*	*	*	*
	Artichoke, globe	*Cynara scolymus*	Immature flower head.	
	Artichoke, Jerusalem.	*Helianthus tubersus*	Whole plant.	
*	*	*	*	*
	Basil	*Ocimum* spp	Above ground parts.	
*	*	*	*	*
	Blackberry	*Rubus* spp	Fruit.	
*	*	*	*	*
	Celery	*Apium graveolens* var. *dulce*	Whole plant.	
	Cichorium	*Cichorium* spp	Above ground parts	(b)(6)(i)
*	*	*	*	*
	Dill	*Anethum graveolens*	Above ground parts.	
*	*	*	*	*
	Jicama or yam bean.	*Pachyrhizus tuberosus, P. erosus*	Root.	
*	*	*	*	*
	Lettuce	*Lactuca sativa*	Whole plant.	
*	*	*	*	*
	Oregano	*Origanum* spp	Above ground parts.	
*	*	*	*	*
	Pepper	*Capsicum* spp	Fruit	(b)(6)(ii)
*	*	*	*	*
	Raspberry	*Rubus* spp	Fruit.	
*	*	*	*	*
	Spinach	*Spinacia oleracea*	Whole plant.	
	Strawberry	*Fragaria* spp	Fruit.	
	Swiss chard	*Beta vulgaris* var. *cicla*	Above ground parts.	
*	*	*	*	*
	Tomatillo	*Physalis ixocarpa*	Whole plant.	
*	*	*	*	*
Netherlands	Cichorium	*Cichorium* spp	Above ground parts	(b)(6)(i)
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
	Eggplant	*Solanum melongena*	Fruit.	
*	*	*	*	*
Nicaragua	Banana	*Musa* spp	Leaf and fruit.	
*	*	*	*	*
	Dasheen	*Colocasia esculenta*	Tuber.	
*	*	*	*	*
Panama				
*	*	*	*	*
	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
Peru				
*	*	*	*	*
	Banana	*Musa* spp	Leaf and fruit.	
*	*	*	*	*
Spain	Cucurbit	Cucurbitaceae	Above ground parts	(b)(3)

Country/locality	Common name	Botanical name	Plant part(s)	Additional restrictions (See paragraph (b) of this section.)
*	*	*	*	*
	Lemon	*Citrus limon*	Fruit	(b)(3), (b)(6)(iv)
*	*	*	*	*
Trinidad and Tobago.	Cucurbit	Cucurbitaceae	Above ground parts	(b)(2)(iii), (b)(3)
*	*	*	*	*
Venezuela	Banana	*Musa* spp	Fruit.	
*	*	*	*	*

(b) * * *

(6) *Plant types.*

(i) Chicory (*Cichorium intybus*) and endive (*Cichorium endiva*) only.

(ii) Rocoto pepper or chamburoto (*Capsicum pubescens*) prohibited.

(iii) Grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), sour lime (*Citrus aurantiifolia*), and tangerine (Citrus reticulata) only.

(iv) Smooth skinned variety only.

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0236, and 0579–0264.)

■ 16. Section 319.56–2v is amended as follows:

■ a. In the introductory text of paragraph (a), by removing the word ''*Dacus*'' and adding the word ''*Bactrocera*'' in its place.

■ b. In paragraph (c), by removing the word ''*Dacus*'' and adding the word ''*Bactrocera*'' in its place and by adding a new sentence after the last sentence to read as set forth below.

§ 319.56–2v Conditions governing the entry of citrus from Australia.

* * * * *

(c) * * * Irradiation treatments found at part 305 of this chapter may be used as an alternative to the cold treatment described in this paragraph.

■ 17. Section 319.56–2w is amended as follows:

■ a. By revising paragraph (a)(1) to read as set forth below.

■ b. In paragraph (a)(6), by adding the word ''Leon,'' after the word ''Granada,''.

■ c. In paragraph (c), by removing the words ''49 °C (120.2 °F)'' and adding the words ''48 °C (118.4 °F)'' in their place.

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Central America and Brazil.

* * * * *

(a) * * *

(1) Brazil: State of Espirito Santo; all areas in the State of Bahia that are between the Jequitinhonha River and the border with the State of Espirito Santo and all areas in the State of Rio Grande del Norte that contain the following municipalities: Touros, Pureza, Rio do Fogo, Barra de Maxaranguape, Taipu, Ceara Mirim, Extremoz, Ielmon Marinho, Sao Goncalo do Amarante, Natal, Maciaba, Parnamirim, Veracruz, Sao Jose de Mipibu, Nizia Floresta, Monte Aletre, Areas, Senador Georgino Avelino, Espirito Santo, Goianinha, Tibau do Sul, Vila Flor, and Canguaretama e Baia Formosa.

* * * * *

■ 18. In § 319.56–2x, paragraph (a), the table is amended as follows:

■ a. Under Argentina, by revising the entries for blueberry and kiwi and adding, in alphabetical order, entries for apple, apricot, cherry, nectarine, peach, pear, plum, pomegranate, and quince to read as set forth below.

■ b. Under Chile, by adding, in alphabetical order, entries for apple, avocado, cherry, and pear to read as set forth below.

■ c. Under Colombia, by adding, in alphabetical order, an entry for blueberry to read as set forth below.

■ d. Under Israel, by removing the entry for cactus and adding, in alphabetical order, an entry for tuna to read as set forth below.

§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Argentina	Apple	*Malus domestica*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Apricot	*Prunus armeniaca*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Blueberry	*Vaccinium* spp.	Fruit. (Treatment for Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Cherry	*Prunus avium, P. cerasus*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Kiwi	*Actinidia deliciosa*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Nectarine	*Prunus persica* var. *nucipersica*.	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Peach	*Prunus persica var. persica*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).

Country/locality	Common name	Botanical name	Plant part(s)
	Pear	*Pyrus communis*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Plum	*Prunus domestica* spp. *domestica*.	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Pomegranate	*Punica granatum*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
	Quince	*Cydonia oblonga*	Fruit. (Treatment for *Anastrepha* spp. fruit flies and Medfly not required if fruit is grown in a fruit fly-free area (see § 319.56–2(j)).
*	* *	*	* * *
Chile	Apple	*Malus domestica*	Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in a Medfly-free area (see § 319.56–2(j)).
	Avocado	*Persea americana*	Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in a Medfly-free area (see § 319.56–2(j)).
	Cherry	*Prunus avium, P. cerasus*	Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in a Medfly-free area (see § 319.56–2(j)).
*	* *	*	* * *
	Pear	*Pyrus communis*	Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in a Medfly-free area (see § 319.56–2(j)).
*	* *	*	* * *
Colombia	Blueberry	*Vaccinium* spp.	Fruit.
*	* *	*	* * *
Israel			
*	* *	*	* * *
	Tuna	*Opuntia* spp.	Fruit.
*	* *	*	* * *

* * * * *

§ 319.56–2gg [Amended]

■ 19. In § 319.56–2gg, paragraph (d) is amended by removing the word ''Deputy''.

Done in Washington, DC, this 2nd day of December 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–23790 Filed 12–7–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV05–984–2 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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

DATES: Effective Date: December 9, 2005.

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

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice

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

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

This rule increases the assessment rate established for the Board for the 2005–06 and subsequent marketing years from $0.0094 to $0.0096 per kernelweight pound of assessable walnuts.

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

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

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

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

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

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

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

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

Final Regulatory Flexibility Analysis

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

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

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

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

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

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

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

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

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

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

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

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

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

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and

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

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

A proposed rule concerning this action was published in the **Federal Register** on November 4, 2005 (70 FR 67096). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending on November 14, 2005, was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving the 2005 walnut crop from growers. The marketing year began on August 1, 2005, and the assessment rate applies to all walnuts received during the 2005–06 and subsequent seasons. The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also a 10-day comment period was provided in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 984

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

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

PART 984—WALNUTS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

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

Dated: December 5, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23818 Filed 12–5–05; 4:29 pm]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

RIN 3133–AC57

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: As required by the Truth in Savings Act, the NCUA is amending its rule and official staff interpretation to address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The amendments address services referred to as ''bounced-check protection'' or ''courtesy overdraft protection'' that pay members' checks and allow other overdrafts when there are insufficient funds in the account. The interim final rule creates a new section in the regulation and requires credit unions that promote the payment of overdrafts in advertisements to disclose fees and other information in advertisements of overdraft services.

DATES: This rule is effective December 8, 2005. To allow time for any necessary operational changes, however, the mandatory compliance date for the interim final rule is July 1, 2006. Comments must be received on or before February 6, 2006.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Part 707 Truth in Savings'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6540 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Moisette I. Green or Frank S. Kressman, Staff Attorneys, at the address above or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2002, the Board of Governors of the Federal Reserve System (Federal Reserve) solicited comment about financial institutions' current overdraft services to determine the need for guidance to depository institutions under 12 CFR part 226 (Regulation Z) and other laws. 67 FR 72618 (December 6, 2002). Based on comments it received, the Federal Reserve amended 12 CFR part 230 (Regulation DD), and its staff commentary in May 2005. 70 FR 29582 (May 24, 2005). Regulation DD, the Federal Reserve's implementation of the Truth in Savings Act (TISA), now requires banks to disclose rates and fees charged as a part of ''bounced-check protection'' or ''courtesy overdraft protection'' programs offered as an alternative to traditional overdraft lines of credit. The Federal Reserve's final rule also requires financial institutions that promote the payment of overdrafts in an advertisement to: (1) Disclose the total fees imposed for paying overdrafts and returning unpaid items on periodic statements for both the statement period and the calendar year to date and (2)

include certain other disclosures in advertisements of overdraft services.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA is issuing this interim final rule with request for comments that is substantially similar to the Federal Reserve's May 2005 final rule.

Part 707 of NCUA's regulations implements TISA for credit unions. 12 CFR part 707. Part 707 requires, among other things, disclosure of yields, fees and other terms concerning share accounts to members before an account is opened, upon a member's request, before an adverse change in account terms occurs, before the renewal of certificates of deposit, and in periodic statements. Credit unions are not required to provide periodic statements, but if they do, statements must have the disclosures TISA requires.

Part 707 and TISA have rules for advertising share accounts and prohibit advertisements, announcements, or solicitations that are inaccurate or misleading, or that misrepresent the credit union's account contract. 12 CFR 707.8(a). For example, credit unions are prohibited from describing an account as ''free'' or using words of similar meaning if any maintenance or activity fee may be imposed. *Id.*

II. The Interim Final Rule

To comply with the Board's obligation under TISA, it is adopting interim final revisions to part 707 and the accompanying official staff interpretation that are substantially similar to the Federal Reserve's final rule in May 2005. NCUA has made some modifications to the rule to account for the unique nature of credit unions. The interim final rule consolidates the guidance for credit unions that promote the payment of overdrafts in a new § 707.11 to facilitate compliance. To give credit unions sufficient time to implement the necessary system changes to comply with the regulation, compliance with the interim final rule will not become mandatory until July 1, 2006.

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in having in place consumer-oriented rules that are consistent with those recently promulgated by the Federal Reserve. Additionally, as discussed above, NCUA is statutorily required to issue rules substantively similar to those of the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. Although the Federal Reserve's rule will not be effective until July 1, 2006, credit unions and their accounting software providers will need to adapt their current systems to accommodate these changes. The Board wants to provide adequate lead time for these changes. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, compliance will not become mandatory until July 1, 2006 to give credit unions sufficient time to implement the necessary system changes to comply with the regulation. Even so, the NCUA Board encourages interested parties to submit comments.

Summary of Revisions to the Regulation

The following is a summary of the interim final rule. This interim final rule tracks closely the Federal Reserve's recent amendments to Regulation DD. A section-by-section analysis of the regulatory language and staff commentary is in the Federal Reserve's final rule. 70 FR 29582 (May 24, 2005).

Disclosures Concerning Overdraft Fees on Periodic Statements

Courtesy overdraft protection allows the payment of a check or debit transaction that would otherwise be rejected for non-sufficient funds (NSF). Payment of the item overdraws the member's account, and a fee is charged for paying the NSF item. Under overdraft protection programs, there is no written agreement between the member and credit union to pay NSF items. Instead, payment is made at the discretion of the credit union, and a fee is charged for each item paid. Generally, overdraft protection services allowed the occasional, manual payment of an overdraft. Some financial institutions have automated the decision and payment process however.

Credit unions that provide courtesy overdraft protection must separately disclose on their periodic statements the total amount of fees or charges imposed on the share account for paying overdrafts and returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date. Credit unions that do not provide this service would not be required to provide the new disclosures.

Account-Opening Disclosures

Credit unions must specify in account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient to state that the fee is imposed for overdrafts created by checks, in-person withdrawals, ATM withdrawals, or by other electronic means, as applicable. This requirement applies to all credit unions, including credit unions that do not promote the payment of overdrafts in an advertisement.

Advertising Rules

To avoid confusion with traditional lines of credit, credit unions that promote the payment of overdrafts must include certain disclosures in their advertisements about the service:

(1) The applicable fees or charges, the categories of transactions covered;

(2) The time period members have to repay or cover any overdraft; and

(3) The circumstances under which the credit union would not pay an overdraft.

Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.

The interim final rule provides safe harbors from the advertising requirements similar to those for the periodic statement disclosure requirements. For example, the advertising disclosure requirements would not apply to credit unions when they provide educational materials, respond to a member-initiated inquiry about overdrafts or share accounts, or notify a member about a specific overdraft in their account.

Advertising disclosures are not required on ATM receipts, due to space limitations. Similarly, advertising disclosures are not required for advertisements using broadcast media, billboards, or telephone response systems. This parallels an exemption in part 707 for other types of advertising disclosures. Limited advertising disclosures are required on ATM screens, telephone response machines, and indoor signs. For example, a sign in a credit union lobby advertising courtesy overdraft protection must state that fees may apply and direct members to contact a credit union employee for more information.

Prohibiting Misleading Advertisements

TISA's prohibition against advertisements, announcements, or solicitations that are misleading or misrepresent the deposit contract is extended to communications with members about the terms of their existing accounts.

Examples of Misleading Advertisements

The staff interpretation is revised to provide five examples of advertisements that would ordinarily be deemed misleading:

(1) Representing an overdraft service as a ''line of credit'';

(2) Representing that the credit union will honor all checks or transactions if the credit union in fact retains discretion not to honor a transaction;

(3) Representing that members with an overdrawn account can maintain a negative balance if the overdraft service requires members to return the share account to a positive balance promptly;

(4) Describing an overdraft service solely as protection against bounced checks, if the credit union also permits and charges a fee for ATM withdrawals and other electronic fund transfers that permit members to overdraw their account; and

(5) Describing an account as ''free'' or ''no cost'' in an advertisement that also promotes a service for which there is a fee, including an overdraft service, unless the advertisement clearly and conspicuously indicates the cost associated with the service.

Possible Coverage Under the Truth in Lending Act (TILA)

The amendments to part 707 recognize that an overdraft service is a feature and term of a share account, and that the fees associated with the service are assessed against the share account. The adoption of interim final rules under part 707 does not preclude a future determination by the Federal Reserve that TILA disclosures would also benefit consumers.

III. Regulatory Flexibility Analysis

The Board has prepared a final regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). TISA was enacted, in part, for the purpose of requiring clear and uniform disclosures regarding deposit account terms and fees assessable against these accounts. Such disclosures allow members to make meaningful comparisons between different accounts and also allow members to make informed judgments about the use of their accounts. 12 U.S.C. 4301. TISA requires the Board to prescribe regulations to carry out the purpose and provisions of the statute. 12 U.S.C. 4308(a)(1), 4311(b). The Board is adopting revisions to part 707 to address the uniformity and adequacy of credit unions' disclosure of fees associated with overdraft services generally and to address concerns about advertised overdraft services in particular. The existing regulation is amended to require credit unions offering certain overdraft services to provide more complete information regarding those services. The Board believes that the revisions to part 707 are within the Board's authority to adopt provisions that carry out the purposes of the statute.

There are other laws that credit unions must consider when administering an overdraft protection program. Although other laws and regulations may apply to credit unions' payment of overdrafts, the final revisions to part 707 do not duplicate or conflict with the requirements imposed by these laws. The Board has also considered the interagency guidance on overdraft protection programs issued in February 2005, and has determined that issuance of the final revisions to part 707 is consistent with the interagency guidance. 70 FR 9127 (February 24, 2005).

Approximately 2,666 of the credit unions in the United States that must comply with TISA have assets of $10 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act, based on 2004 call report data. The Board believes that almost all small credit unions that offer accounts where overdraft or returned-item fees are imposed currently send periodic statements on those accounts, although the number of small credit unions that promote their overdraft services is unknown. For those credit unions that promote the payment of overdrafts in an advertisement, periodic statement disclosures will need to be revised to display aggregate overdraft and aggregate returned-item fees for the statement period and year to date. All small credit unions will have to review, and perhaps revise account-opening disclosures and marketing materials.

The revisions to part 707 require all credit unions to provide more complete information to members regarding overdraft services. Account-opening disclosures and marketing materials would describe more completely how fees may be triggered. Credit unions that provide overdraft services must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which the service is provided. Certain advertising practices are prohibited, and additional disclosures on advertisements of overdraft services are required.

The Board is soliciting comment on how the burden of disclosures on credit unions could be minimized. The interim final rule limits the requirement to disclose aggregate totals for overdraft and returned-item fees for the statement period and the calendar year to date to credit unions that provide *ad hoc* payments of overdrafts or promote the payment of overdrafts in an advertisement, thereby encouraging the routine use of the service. It also specifies certain practices that would not trigger the new overdraft disclosures. The safe harbors provide additional certainty to credit unions in determining whether compliance with the rule is required in particular circumstances. Consistent with the rule requiring periodic statement disclosures, the interim final rule also provides safe harbors to specify circumstances when a credit union would not be required to provide additional advertising disclosures.

Under the interim final rule, credit unions are permitted to provide an illustrative list of categories by which overdrafts may be created to generally eliminate the need to provide a change-in-terms notice each time a new channel for creating overdrafts is added. The interim final rule also provides additional guidance regarding the types of fees that should be included in the total dollar amount of fees and charges imposed on the account for paying overdrafts and in the total dollar amount for returning items unpaid.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Board has submitted the information collection requirements contained in this interim final rule to the Office of Management and Budget (OMB). The NCUA may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The current OMB control number for the Truth in Savings program is 3133–0134. This information collection will be revised to include the requirements of this interim final rule.

The collection of information that is revised by this rulemaking is found in 12 CFR part 707 and Appendix C. This

collection is mandatory to evidence compliance with the requirements of part 707 and TISA. 15 U.S.C. 4301 *et seq.* Credit unions must retain records for twenty-four months. This regulation applies to all types of credit unions, not just federally-insured credit unions.

The revisions provide that credit unions offering certain overdraft payment services must provide more complete information regarding those services. Account-opening disclosures and other marketing materials describe more completely how fees may be triggered. Credit unions that promote the payment of overdrafts must separately disclose on periodic statements the total dollar amount of fees and charges imposed on the account for paying overdrafts and the total dollar amount of fees charged to the account for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date for each account to which an advertisement applies. Certain advertising practices are prohibited, and additional disclosures in advertisements for the payment of overdrafts are required. Although the interim final rule adds these requirements, it is expected that these revisions would not significantly increase the ongoing paperwork burden of credit unions. However, respondents would face a one-time burden to reprogram and update their systems to include these new notice requirements.

There are an estimated 9,128 credit unions. The NCUA estimates that it will take the respondents, on average, 8 hours or one business day to make these one-time system changes. Additionally, Respondents would also face a one-time burden to revise and update their advertising materials. NCUA estimates that it will take approximately 40 hours, one business week to update these materials. NCUA estimates respondents will incur a burden of 12,514,201 hours meeting the requirements of this interim final rule. NCUA estimates that the total, continuing annual burden for the Truth in Savings program to be 12,076,057 hours. Prior to this interim final rule, NCUA estimated the annual burden to be 10,467,679 hours. The annual burden under this interim final rule will increase 1,608,378 burden hours.

NCUA invites comment on:

(1) The accuracy of NCUA's estimate of the burden of the information collection;

(2) Ways to minimize the burden of the information collection on credit unions, including the use of automated collection techniques or other forms of information technology; and

(3) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Interested may submit comments regarding the information collection requirements in this rule. Comments must be received within 30 days from the publication of this interim final rule. Include ''Comments on Part 707 Truth in Savings'' in the comments header and send them to NCUA using one of the methods described above and to: NCUA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6974.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on November 29, 2005.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 707 as set forth below:

PART 707—TRUTH IN SAVINGS

■ 1. The authority citation for part 707 continues to read as follows:

Authority: 12 U.S.C. 4311.

■ 2. Section 707.2 is amended by revising paragraph (b) to read as follows:

§ 707.2 Definitions.

* * * * *

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly:

(1) The availability or terms of, or a deposit in, a new account; and

(2) For purposes of § 707.8(a) and § 707.11 of this part, the terms of, or a deposit in, a new or existing account.

* * * * *

■ 3. Section 707.6 is amended by republishing paragraph (b) introductory text and revising paragraph (b)(3) to read as follows:

§ 707.6 Periodic statement disclosures.

* * * * *

(b) *Statement disclosures.* If a credit union mails or delivers a periodic statement, the statement must include the following disclosures:

* * * * *

(3) *Fees imposed.* Fees required to be disclosed under § 707.4(b)(4) of this part that were debited from the account during the statement period. The fees must be itemized by type and dollar amounts. Except as provided in § 707.11(a)(1) of this part, when fees of the same type are imposed more than once in a statement period, a credit union may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type.

* * * * *

■ 4. Section 707.8 is amended by revising paragraph (a), and adding a new paragraph (f) to read as follows:

§ 707.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement must not:

(1) Be misleading or inaccurate or misrepresent a credit union's account agreement; or

(2) Refer to or describe an account as ''free'' or ''no cost'' or contain a similar term if any maintenance or activity fee may be imposed on the account. The word ''profit'' must not be used in referring to dividends or interest paid on an account.

* * * * *

(f) *Additional disclosures in connection with the payment of overdrafts.* Credit unions that promote the payment of overdrafts in an advertisement must include in the advertisement the disclosures required by § 707.11(b) of this part.

* * * * *

■ 5. Section 707.11 is added to read as follows:

§ 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts.

(a) *Periodic statement disclosures.* (1) *Disclosure of Total Fees.* (i) Except as provided in paragraph (a)(2) of this section, if a credit union promotes the payment of overdrafts in an advertisement, the credit union must separately disclose on each periodic statement:

(A) The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient funds and the account becomes overdrawn; and

(B) The total dollar amount for all fees imposed on the account for returning items unpaid.

(ii) The disclosures required by this paragraph must be provided for the statement period and for the calendar year to date, for any account to which the advertisement applies.

(2) *Communications not triggering disclosure of total fees.* The following communications by a credit union do not trigger the disclosures required by paragraph (a)(1) of this section:

(i) Promoting in an advertisement a service for paying overdrafts where the credit union's payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) Communicating, whether by telephone, electronically, or otherwise, about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, an automated teller machine (ATM), or a credit union's Internet site, is not a response to a member-initiated inquiry for purposes of this paragraph;

(iii) Engaging in an in-person discussion with a member;

(iv) Making disclosures that are required by Federal or other applicable law;

(v) Providing a notice or including information on a periodic statement informing a member about a specific overdrawn item or the amount the account is overdrawn;

(vi) Including in a share account agreement a discussion of the credit union's right to pay overdrafts;

(vii) Providing a notice to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or providing a general notice that items overdrawing an account may trigger a fee; or

(viii) Providing informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service.

(3) *Time period covered by disclosures.* A credit union must make the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after a credit union advertises the payment of overdrafts. A credit union may disclose total fees imposed for the calendar year by aggregating fees imposed since the beginning of the calendar year, or since the beginning of the first statement period that year for which such disclosures are required.

(4) *Termination of promotions.* Paragraph (a)(1) of this section becomes inapplicable with respect to a share account two years after the date of a credit union's last advertisement promoting the payment of overdrafts related to that account.

(5) *Acquired accounts.* A credit union that acquires an account must thereafter provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the credit union promotes the payment of overdrafts in an advertisement that applies to the acquired account. If disclosures under paragraph (a)(1) of this section are required for the acquired account, the credit union may, but is not required to, include fees imposed before acquisition of the account.

(b) *Advertising disclosures for overdraft services.* (1) *Disclosures.* Except as provided in paragraphs (b)(2),(b)(3), and (b)(4) of this section, any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner:

(i) The fee or fees for the payment of each overdraft;

(ii) The categories of transactions for which a fee for paying an overdraft may be imposed;

(iii) The time period by which the member must repay or cover any overdraft; and

(iv) The circumstances under which the credit union will not pay an overdraft.

(2) *Communications about the payment of overdrafts not subject to additional advertising disclosures.* Paragraph (b)(1) of this section does not apply to:

(i) An advertisement promoting a service where the credit union's payment of overdrafts will be agreed upon in writing and subject to part 226 of this title (Regulation Z);

(ii) A communication by a credit union about the payment of overdrafts in response to a member-initiated inquiry about share accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or a credit union's Internet site, is not a response to a member-initiated inquiry for purposes of this paragraph;

(iii) An advertisement made through broadcast or electronic media, such as television or radio;

(iv) An advertisement made on outdoor media, such as billboards;

(v) An ATM receipt;

(vi) An in-person discussion with a member;

(vii) Disclosures required by Federal or other applicable law;

(viii) Information included on a periodic statement or a notice informing a member about a specific overdrawn item or the amount the account is overdrawn;

(ix) A term in a share account agreement discussing the credit union's right to pay overdrafts;

(x) A notice provided to a member, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee; or

(xi) Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the credit union's overdraft service.

(3) *Exception for ATM screens and telephone response machines.* The disclosures described in paragraphs (b)(1)(ii) and (b)(1)(iv) of this section are not required in connection with any advertisement made on an ATM screen or using a telephone response machine.

(4) *Exception for indoor signs.* Paragraph (b)(1) of this section does not apply to advertisements for the payment of overdrafts on indoor signs as described by § 707.8(e)(2) of this part, provided that the sign contains a clear and conspicuous statement that fees may apply and that members should contact an employee for further information about applicable fees and terms. For purposes of this paragraph (b)(4), an indoor sign does not include an ATM screen.

■ 6. Amend Appendix C to part 707 as follows:

■ a. Under § 707.2 Definitions, under *(b) Advertisement*, the introductory sentence to paragraph 2 is republished, paragraph 2.iv is revised, and new paragraphs 2.v through 2.vii are added.

■ b. Under § 707.4 Account disclosures, under *(b)(4) Fees*, a new paragraph 6 is added.

■ c. Under § 707.6 Periodic statement disclosures, under *(b)(3) Fees imposed,* paragraph 2 is revised.

■ d. Under § 707.8 Advertising, under *(a) Misleading or inaccurate advertisements*, a new paragraph 10 is added.

■ e. A new § 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts, is added in numerical order.

The additions and revisions read as follows:

Appendix C To Part 707—Official Staff Interpretations

* * * * *

§ 707.2 Definitions.

* * * * *

(b) Advertisement

* * * * *

2. *Other messages.* Examples of messages that are not advertisements are—

* * * * *

iv. For purposes of § 707.8(b) of this part through § 707.8(e) of this part, information given to members about

existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal.

v. Information about a particular transaction in an existing account.

vi. Disclosures required by Federal or other applicable law.

vii. A share account agreement.

* * * * *

§ 707.4 Account Disclosures.

* * * * *

(b) Content of account disclosures

* * * * *

(b)(4) Fees

* * * * *

6. *Fees for overdrawing an account.* Under § 707.4(b)(4) of this part, credit unions must disclose the conditions under which a fee may be imposed. In satisfying this requirement credit unions must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for a credit union to state that the fee applies to overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means.'' Disclosing a fee ''for overdraft items'' would not be sufficient.

* * * * *

§ 707.6 Periodic statement disclosures.

* * * * *

(b) Statement Disclosures

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(b)(3) Fees imposed

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2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, credit unions may group fees if they are the same type. See § 707.11(a)(1) of this part regarding certain fees that must be grouped when a credit union promotes the payment of overdrafts. When fees of the same type are grouped together, the description must make clear that the dollar figure represents more than a single fee, for example, ''total fees for checks written this period.'' Examples of fees that may not be grouped together are—

i. Monthly maintenance and excess-activity fees.

ii. ''Transfer'' fees, if different dollar amounts are imposed, such as $.50 for deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers and fees for other services, such as balance-inquiry or maintenance fees.

iv. Fees for paying overdrafts and fees for returning checks or other items unpaid.

* * * * *

§ 707.8 Advertising.

(a) Misleading or inaccurate advertisements

* * * * *

10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

i. Representing an overdraft service as a ''line of credit,'' unless the service is subject to 12 CFR part 226 (Regulation Z).

ii. Representing that the credit union will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the credit union retains discretion at any time not to honor checks or authorize transactions.

iii. Representing that members with an overdrawn account can maintain a negative balance when the terms of the account's overdraft service require members promptly to return the share account to a positive balance.

iv. Describing a credit union's overdraft service solely as protection against bounced checks when the credit union also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.

v. Advertising an account-related service for which the credit union charges a fee in an advertisement that also uses the word ''free'' or ''no cost'' or a similar term to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under § 707.8(a)(2) of this part, however, an advertisement may not describe the account as ''free'' or ''no cost'' or contain a similar term even if the fee is disclosed in the advertisement.

* * * * *

§ 707.11 Additional disclosure requirements for credit unions advertising the payment of overdrafts.

(a) Periodic statement disclosures.

(a)(1) Disclosure of total fees.

1. *Examples of credit unions advertising the payment of overdrafts.* A credit union would trigger the periodic statement disclosures if it:

i. Promotes the credit union's policy or practice of paying some overdrafts, unless the service would be subject to 12 CFR part 226 (Regulation Z), in advertisements using broadcast media, brochures, telephone solicitations ,or electronic mail, or on Internet sites, ATM screens or receipts, billboards, or indoor signs. But see, § 707.11(a)(2) of this part regarding communications about the payment of overdrafts that would not trigger periodic statement disclosures;

ii. Includes a message on a periodic statement informing the member of an overdraft limit or the amount of funds available for overdrafts. For example, a credit union that includes a message on a periodic statement informing the member of a $500 overdraft limit or that the member has $300 remaining on the overdraft limit, is promoting an overdraft service;

iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed by any means, including on an ATM receipt or on an automated system, such as a telephone response machine, ATM screen, or the credit union's Internet site.

2. *Applicability of periodic statement disclosures.* The periodic statement disclosures apply to all accounts for which the credit union has advertised the payment of overdrafts. For example, if an advertisement promoting the payment of overdrafts specifies the types of accounts to which the advertisement applies, the credit union would not be required to provide the periodic statement disclosures for other types of accounts offered by the credit union for which the advertisement does not apply. If an advertisement does not specify the types of accounts to which it applies, the advertisement would be considered to apply to all of a credit union's share accounts.

3. *Transfer services.* The overdraft services covered by § 707.11(a)(1) of this part do not include a service providing for the transfer of funds from another share account of the member to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

4. *Fees for paying overdrafts.* A credit union that advertises the payment of overdrafts must disclose on periodic statements a total dollar amount for all fees charged to the account for paying overdrafts. The credit union must disclose separate totals for the statement period and for the calendar year to date. The total dollar amount includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account to avoid an overdraft, or fees

charged when the credit union has previously agreed in writing to pay items that overdraw the account and the service is subject to 12 CFR part 226 (Regulation Z).

5. *Fees for returning items unpaid.* A credit union that advertises the payment of overdrafts must disclose a total dollar amount for all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The credit union must disclose separate totals for the statement period and for the calendar year to date. Fees imposed when deposited items are returned are not included.

6. *Waived fees.* In some cases, a credit union may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Credit unions may, but are not required to, reflect the adjustment in the total for the calendar year to date. Such adjustments should not affect the total disclosed for fees imposed during the current statement period.

7. *Totals for the calendar year to date.* Some credit unions' statement periods do not coincide with the calendar month. In such cases, the credit union may disclose a calendar year-to-date total by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2006 through January 9, 2007 may disclose the year-to-date total for fees imposed from January 10, 2006 through January 9, 2007. Alternatively, the credit union could provide a statement for the cycle ending January 9, 2007, showing the year-to-date total for fees imposed January 1, 2006 through December 31, 2006.

8. *Itemization of fees.* A credit union may itemize each fee in addition to providing the disclosures required by § 707.11(a)(1) of this part.

(a)(3) Time period covered by disclosures

1. *Periodic statement disclosures.* The disclosures under § 707.11(a)(1) of this part must be included on periodic statements provided by a credit union reflecting the first statement period that begins after the credit union advertises the payment of overdrafts. For example, if a member's statement period typically closes on the 15th of each month, a credit union that promotes the payment of overdrafts on July 1, 2006, must provide the disclosures required by § 707.11(a)(1) of this part on subsequent periodic statements for that member beginning with the statement reflecting the period from July 16, 2006 through August 15, 2006. Only credit unions that promote the payment of overdrafts in an advertisement on or after July 1, 2006 must provide disclosures on periodic statements under § 707.11(a)(1) of this part.

(a)(5) Acquired accounts

1. *Examples.* As provided in § 707.11(a)(5) of this part, a credit union that acquires share accounts through merger must provide the disclosures required by paragraph (a)(1) of this section for the first statement period that begins after the credit union promotes the payment of overdrafts in an advertisement that applies to the acquired account. If the acquiring credit union does not advertise the payment of overdrafts, or the advertisement does not apply to the acquired accounts, the credit union need not provide the disclosures required by § 707.11(a)(1) of this part for the acquired accounts, even if the credit union that previously held the accounts advertised the payment of overdrafts with respect to those accounts.

(b) Advertising disclosures in connection with overdraft services

1. *Examples of credit unions promoting the payment of overdrafts.* A credit union must include the advertising disclosures in § 707.11(b)(1) of this part if the credit union:

i. Promotes the credit union's policy or practice of paying overdrafts, unless the service would be subject to 12 CFR part 226 (Regulation Z). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. But see, § 707.11(b)(2) of this part for communications that are not subject to the additional advertising disclosures;

ii. Includes a message on a periodic statement informing the member of an overdraft limit or the amount of funds available for overdrafts. For example, a credit union that includes a message on a periodic statement informing the member of a $500 overdraft limit or that the member has $300 remaining on the overdraft limit, is promoting an overdraft service.

iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen, or the credit union's Internet site. See, however, § 707.11(b)(3) of this part.

2. *Transfer services.* The overdraft services covered by § 707.11(b)(1) of this part do not include a service providing for the transfer of funds from another share account of the member to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

3. *Electronic media.* The exception for advertisements made through broadcast or electronic media, such as television or radio, does not apply to advertisements posted on a credit union's Internet site, on an ATM screen, provided on telephone response machines, or sent by electronic mail.

4. *Fees.* The fees that must be disclosed under § 707.11(b)(1) of this part include per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft or fees charged when the credit union has previously agreed in writing to pay items that overdraw the account and the service is subject to 12 CFR part 226 (Regulation Z).

5. *Categories of transactions.* An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts ''created by check, in-person withdrawal, ATM withdrawal, or other electronic means would satisfy the requirements of § 707.11(b)(1)(ii) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)-5 of this part.

6. *Time period to repay.* If a credit union reserves the right to require a member to pay an overdraft immediately or on demand instead of affording members a specific time period to establish a positive balance in the account, a credit union may comply with § 707.11(b)(1)(iii) of this part by disclosing this fact.

7. *Circumstances for nonpayment.* A credit union must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: ''Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.''

8. *Advertising an account as ''free.''* If the advertised account-related service is an overdraft service subject to the requirements of § 707.11(b)(1) of this

part, credit unions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information. Compliance with comment 8(a)—10.v is not sufficient.

* * * * *

[FR Doc. 05–23711 Filed 12–7–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23187; Directorate Identifier 2005–NM–203–AD; Amendment 39–14397; AD 2005–25–04]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. This AD also requires repetitively inspecting the skin, attachment fittings, and control rods of rudder II to detect cracking, loose parts, wear, or damage; and related investigative/corrective actions if necessary. This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane.

DATES: This AD becomes effective December 23, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 23, 2005.

We must receive comments on this AD by February 6, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: 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 Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The DAC advises that it has received reports of rudder vibration. Investigation revealed wear in the attachment flange bushings of rudder II that progressed over the hinge fittings of rudder II. Investigation also revealed excessive freeplay of the end-to-rod attachment of the lower control rod on rudder II. Failure of multiple hinge fittings could result in severe vibration, and failure of the rudder control rods could result in jamming of the rudder II. These conditions, if not corrected, could result in possible structural failure and reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Alert Service Bulletins 145LEG–55–A010, dated August 26, 2005, and 145–55–A036, Revision 01, dated September 5, 2005. The following table identifies the actions described in the service bulletins, which are divided into six parts.

SERVICE BULLETIN PROCEDURES

Part	Action	Condition	Related investigative and corrective actions
I	Visual inspection of the rudder II skin.	Crack	Repair or replacement of the affected area.
	Inspection of the rudder II control rods.	Relative movement between a control rod and its rod end.	Replacement of the control rod.
	Detailed visual inspection of the rudder II attachment fittings.	Wear or damage at only one attachment.	Part(s) II, III, IV, or V, as applicable, of the service bulletin.
		Wear or damage at more than one attachment.	Parts II, III, IV, and V of the service bulletin.
II–V	Dimensional inspection of hinge attachment points I, II, III, and IV.	Adequate measurements	Part VI of the service bulletin.
		Measurements within certain limits.	Replacement of the bolt and/or bushing, and accomplishment of the remaining parts of the service bulletin.
		Measurements for the bushing less than certain limits.	Repair as approved by EMBRAER.
VI	Install washers in hinge fittings	Group and modification status	Installation as specified in Figure 4 of the service bulletin, or restoration of modified airplanes as specified in the airplane maintenance manual (AMM).
	Install washers in control rod assembly.	Modification status	Installation as specified in Figure 5 of the service bulletin, or restoration of modified airplanes as specified in the AMM.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service bulletins and issued Brazilian emergency airworthiness directive 2005–09–02R1, dated November 3, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

The service bulletins refer to EMBRAER Service Bulletins 145LEG–55–0008, Revision 01, dated January 14, 2005; 145LEG–55–0009, dated June 21, 2004; and 145–55–0034, Revision 01, dated January 14, 2005, as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in Brazil 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 DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and reduced controllability of the airplane. This AD requires reviewing the airplane maintenance records for recent reports of vibration from the tail section or rudder pedals. This AD also requires the actions specified in the service information described previously, except as discussed below.

Differences Between AD and Service Information/Brazilian Airworthiness Directive

The Brazilian airworthiness directive allows operators up to 20 flight hours/cycles to inspect airplanes that experienced vibration from the tail section or rudder pedals. However, for vibration reported before the effective date of the AD, to avoid unnecessary burden on operators, this AD requires compliance for the initial inspection within 2 days after the records review. And, for vibration reported after the effective date of the AD, the AD will require an inspection before the next flight. We have not received data to substantiate the continued safe operation of airplanes with reported vibration. However, if EMBRAER provides inspection criteria or analyses that would substantiate continued operational flight for the specified time period, we may consider further rulemaking in the future.

The service bulletins specify to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions using a method that we or the DAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we or the DAC approve under those conditions would be acceptable for compliance with this AD.

Clarification of Inspection Terminology

Where Part I of the service bulletins refers to inspections for discrepancies of the rudder II, we have determined that these procedures should be described as a ''detailed inspection.'' Note 1 in this AD defines this type of inspection.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2005–23187; Directorate Identifier 2005–NM–203–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):

2005–25–04 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14397. Docket No. FAA–2005–23187; Directorate Identifier 2005–NM–203–AD.

Effective Date

(a) This AD becomes effective December 23, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –35KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of rudder vibration due to wear. We are issuing this AD to prevent failure of multiple hinge fittings, which could result in severe vibration, and to prevent failure of the rudder control rods, which could result in jamming of the rudder II; and possible structural failure and 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.

Records Review

(f) Within 5 days after the effective date of this AD: Review the airplane maintenance records to determine whether any vibration from the tail section or rudder pedals was reported within 120 flight hours or 100 flight cycles before the effective date of this AD.

Inspection

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Do a detailed inspection of the skin, attachment fittings, and control rods of rudder II to detect cracks, loose parts, wear, or damage. Inspect in accordance with the Accomplishment Instructions of EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005 (for Model EMB–135BJ airplanes); or 145–55–A036, Revision 01, dated September 5, 2005 (for all other airplanes). Do all related investigative/corrective actions before further flight by doing all applicable actions specified in the service bulletin; except as required by paragraph (i) of this AD. Repeat the inspection at intervals not to exceed 2,500 flight hours, except as required by paragraph (h) of this AD.

(1) If any vibration was reported during the time period specified in paragraph (f) of this AD, inspect within 2 days after the records review.

(2) If no vibration was reported during the time period specified in paragraph (f) of this AD, except as required by paragraph (h) of this AD, inspect before the later of:

(i) 2,500 total accumulated flight hours.

(ii) 600 flight hours or 500 flight cycles, whichever occurs first, after the effective date of this AD.

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 a mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(h) If any vibration from the tail section or rudder pedals is reported after the effective date of this AD, do the inspection specified in paragraph (g) of this AD before the next flight. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours.

Note 2: EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005, and 145–55–A036, Revision 01, dated September 5, 2005; refer to EMBRAER Service Bulletins 145LEG–55–0008, Revision 01, dated January 14, 2005, 145LEG–55–0009, dated June 21, 2004, and 145–55–0034, Revision 01, dated January 14, 2005, as additional sources of service information for installing washers in the rudder II hinge fittings and control rod assembly.

Exceptions to Service Bulletin Specifications

(i) Where EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–A036 specify to contact EMBRAER for repair instructions, operators must perform the repair before further flight using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (or its delegated agent).

(j) Although EMBRAER Alert Service Bulletins 145LEG–55–A010 and 145–55–A036 recommend sending a report of the inspection results to the manufacturer, this AD does not require a report.

Credit for Prior Accomplishment of Earlier Service Bulletin

(k) For Model –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: Accomplishment of the inspection and applicable related investigative/corrective actions before the effective date of this AD, in accordance with EMBRAER Alert Service Bulletin 145–55–A036, dated August 20, 2005, is acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(m) Brazilian emergency airworthiness directive 2005–09–02R1, dated November 3, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use EMBRAER Alert Service Bulletin 145LEG–55–A010, dated August 26, 2005; or EMBRAER Alert Service Bulletin 145–55–A036, Revision 01, dated September 5, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23656 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–20248; Airspace Docket 05–AWP–13]

Established Class D Airspace; Front Range Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the altitude description of a final rule that was published in the **Federal Register** on June 28, 2005, (70 FR 37028), Airspace Docket No. 05–AWP–1.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Federal Aviation Administration, Western Terminal Operations, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On June 28, 2005, Airspace Docket No. 05–AWP–1 was published in **Federal Register** (70 FR 37028), establishing Class D airspace at Front Range Airport, Denver, CO. In that rule, the airspace altitude description was not correct. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal description for the airspace altitude for Class D airspace at Front Range Airport, Denver, CO, as published in the **Federal Register** on June 28, 2005, (70 FR 37028), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace area extending upward from the surface of the earth.

* * * * *

ANM COD Front Range Airport, Denver, CO [NEW]

Front Range Airport, Denver, CO
(Lat. 39°47′07″ N, long. 104°32′35″ W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 5.1 nautical mile radius of the Front Range Airport, Denver, CO, excluding the Denver International Airport Class B. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California on November 18, 2005.

Tony DiBernardo,

Acting Area Director, Western Terminal Operations.

[FR Doc. 05–23756 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–22496; Airspace Docket No. 04–ANM–26]

RIN 2120–AA66

Amendment to Jet Route J–158; ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises a segment of Jet Route J–158 between the Malad City, ID, Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) and the Muddy Mountain, WY, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC). Specifically, the FAA is realigning the route from Malad City, ID, to Big Piney, WY, VOR/DME to Muddy Mountain, WY. This action replaces an airway segment taken out of service, reduces controller workload, and enhances the National Airspace System.

EFFECTIVE DATE: 0901 UTC, February 16, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On October 4, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise J–158 between the Malad City, ID, VOR/DME and the Muddy Mountain, WY, VORTAC (70 FR 57806). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to revise a segment of J–158. This amendment would insert a segment extending from Malad City, ID, VOR/DME to Big Piney, WY, VOR/DME to Muddy Mountain, WY, VORTAC, and restores the use of J–158 between Malad City and Muddy Mountain.

Domestic Jet Routes are published in paragraph 2004 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The domestic Jet Route listed in this document will be published subsequently in the order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes

* * * * *

J–158 [Revised]

From Mina, NV, via Lucin, UT; Malad City, ID; Big Piney, WY; Muddy Mountain, WY; Rapid City, SD; to Aberdeen, SD.

* * * * *

Issued in Washington, DC, on December 1, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–23758 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 1994F–0153] (formerly Docket No. 94F–0153)

Food Additives Permitted for Direct Addition to Food for Human Consumption; Synthetic Fatty Alcohols

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *n*-octanol (*n*-octyl alcohol) produced by a new manufacturing process, the hydrodimerization of 1,3-butadiene. This action is in response to a petition filed by Kuraray International Corp.

DATES: This rule is effective December 8, 2005. Submit written or electronic objections and requests for a hearing by January 9, 2006. See section VI of this document for information on the filing of objections. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in new § 172.864(a)(3) (21 CFR 172.864(a)(3)) as of December 8, 2005.

ADDRESSES: You may submit written or electronic objections and requests for a hearing, identified by Docket No. 1994F–0153, by any of the following methods:

Electronic Submissions

Submit electronic submissions in the following ways:

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

Written Submissions

Submit written submissions in the following ways:

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

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

Instructions: All submissions received must include the agency name and docket number and regulatory information number (RIN) (if a RIN number has been assigned) for this rulemaking. All objections received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting objections, see the ''Objections'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1272.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 26, 1994 (59 FR 27281), FDA announced that a food additive petition (FAP 4A4419) had been filed by Kuraray International Corp., c/o 1001 G St. NW., Washington, DC 20001. The petition proposed to amend the food additive regulations in § 172.864 *Synthetic fatty alcohols* (21 CFR 172.864) to provide for the safe use of *n*-octanol produced by a new manufacturing process, the hydrodimerization of 1,3-butadiene. Subsequently, Kuraray America, Inc., notified the agency of the merging of Kuraray International Corp., into Kuraray America, Inc., and the transfer of ownership of the petition (FAP 4A4419) to Kuraray America, Inc.

n-Octanol (*n*-octyl alcohol) synthesized by the proposed manufacturing process is intended for use in the same manner as *n*-octanol prepared by other manufacturing processes under § 172.864.

In evaluating the safety of *n*-octanol synthesized by the proposed manufacturing process, FDA has reviewed the safety of the additive and the chemical impurities that may be present in it resulting from its manufacturing process. Although *n*-octanol has not been shown to cause cancer, it may contain minute amounts of residual precursor as an impurity resulting from its method of production. In particular, *n*-octanol may contain traces of the precursor, 1,3-butadiene, which has been shown to cause cancer in test animals. Residual amounts of reactants and their impurities are commonly found as contaminants of chemical products, including food additives.

II. Determination of Safety

Under the general safety standard in section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as a ''reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (section 409(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause

cancer, but contains a carcinogenic impurity, the additive is evaluated properly under the general safety standard using risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the intended use of the additive (*Scott*v. *FDA, 728 F.2d 322 (6th Cir. 1984)*).

In evaluating the safety of a food additive, FDA customarily reviews the available data on each relevant chemical impurity to determine whether the chemical induces tumors in animals or humans. If FDA concludes that the chemical impurity causes cancer in animals or humans, the agency calculates the unit cancer risk for the chemical and the upper-bound limit of lifetime human cancer risk from the chemical's presence in the additive.

In some instances, the available data and information may not allow the agency to determine whether a particular chemical impurity in a food additive is a carcinogen via ingestion. However, the available data may suggest, but not establish definitively, that the impurity poses a human cancer risk via this route. In such circumstances, the agency may perform a risk assessment based upon the available data and the assumption that the impurity is carcinogenic via ingestion. This approach permits the agency to determine whether there is a reasonable certainty that no harm will result from the petitioned use of the food additive, even though the carcinogenic status of the impurity is not clearly established. FDA followed this approach to determine whether there is a reasonable certainty that no harm will result from the food additive use of *n*-octanol synthesized by hydrodimerization of 1,3-butadiene. In doing so, FDA assumed that 1,3-butadiene, an impurity in the additive, would also be carcinogenic when administered by ingestion.

A. Evaluation of the Petitioned Use of the Additive Produced by the New Manufacturing Process

n-Octanol produced by the proposed manufacturing process, the hydrodimerization of 1,3-butadiene, is intended to be used in the same manner as currently permitted synthetic and naturally derived *n*-octanol. Therefore, FDA concludes that the proposed amendment to the regulation providing for the petitioned manufacturing process for *n*-octanol will not result in a change in the daily intake of the additive *n*-octanol because no new uses are proposed. Thus, the only new issue is human exposure to 1,3-butadiene from food containing *n*-octanol produced by the new manufacturing process.

FDA has evaluated the safety of *n*-octanol produced by the new manufacturing process, under the general safety standard, and concludes that the use of the resulting additive is safe. In reaching this conclusion, FDA reviewed relevant toxicological data on 1,3-butadiene and used risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by levels that may be present in the petitioned additive.

The risk evaluation of 1,3-butadiene has two aspects: (1) Assessment of exposure to 1,3-butadiene from the petitioned use of *n*-octanol produced by the new manufacturing process and (2) extrapolation of the risk observed in the animal bioassays to the conditions of exposure to humans.

B. 1,3-Butadiene

In one long-term inhalation study in mice, 1,3-butadiene has been reported to induce a variety of tumors, including in the hematopoietic system, heart, lung, forestomach, liver, Harderian gland, brain, and kidney in both sexes and tumors of the ovaries and mammary gland in female mice (Ref. 1). 1,3-Butadiene also has been reported to induce tumors of the pancreas and testis in male rats and tumors of the uterus, mammary gland, and thyroid in female rats in another long-term inhalation study (Refs. 2 and 3). FDA does not believe, however, that these inhalation studies are necessarily determinative of the carcinogenic potential of 1,3-butadiene when administered orally, the route of human exposure to food additives.

No long-term studies are available in which 1,3-butadiene was administered to test animals orally. Therefore, the agency has performed a carcinogenicity risk assessment for 1,3-butadiene based on the assumption that 1,3-butadiene would induce tumors in animals and humans if administered orally and that its potency by the oral route of exposure would be no greater than its potency by the inhalation route of exposure (the predominant route of exposure). In this risk assessment the agency utilized data on female mice from an inhalation study of 1,3-butadiene to calculate a unit cancer risk of 1.4 (milligrams per kilograms (kg) body weight per day)$^{-1}$ for 1,3-butadiene (Ref. 4).

1,3-Butadiene was not detected in the product. However, based on the limit of detection, FDA has estimated the exposure to 1,3-butadiene from the petitioned use of the subject additive would not exceed 0.63 parts per trillion in the daily diet (3 kg), or 1.9 nanograms per person per day (Refs. 5 and 6). Based on this estimate and the assumption that 1,3-butadiene would induce tumors with the same potency in an oral study as it did in the mouse inhalation study, FDA estimates that the upper-bound limit of lifetime human risk from butadiene exposure as a result of the petitioned used of the subject additive would be 4.4×10^{-8} (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,3-butadiene is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,3-butadiene would result from the petitioned use of the additive.

C. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of 1,3-butadiene present as an impurity in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) The agency would not expect 1,3-butadiene to become a component of food at other than extremely low levels because of its volatility and the low levels at which 1,3-butadiene (below detection limit) may be expected to remain as an impurity following production and purification of the additive and (2) the upper-bound limit of lifetime human risk from exposure to 1,3-butadiene is very low, 4.4×10^{-8}.

III. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive produced by the new manufacturing process is safe, and, therefore, the regulations in § 172.864 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this final rule. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ''Toxicology and Carcinogenesis Studies of 1,3-Butadiene (CAS No. 106–99–0) in B6C3F1 Mice (Inhalation Studies),'' National Toxicology Program, Technical Report Series, No. 434.

2. Owen, P.E. et al., ''Inhalation Toxicity Studies with 1,3-Butadiene. 3 Two Year Toxicity/Carcinogenicity Studies in Rats,'' *American Industrial Hygiene Association Journal*, 48: 407–413, 1987.

3. Owen, P.E. and J.R. Glaister, ''Inhalation Toxicity and Carcinogenicity Study of 1,3-Butadiene in Sprague-Dawley Rats,'' *Environmental Health Perspectives*, 86: 19–25, 1990.

4. Memorandum dated February 23, 2001, from the Division of Product Policy, Scientific Support Branch to the Division of Product Policy, Regulatory Policy Branch, ''Food Additive Petition 4A4419—Kuraray America Inc. (formerly Kuraray International Corporation)/Keller & Heckman. *n*-Octanol, a currently cleared synthetic fatty alcohol produced by a new manufacturing process, for use as an ingredient in food. Submissions dated 4–7–1994 and 4–12–1994.''

5. Memorandum dated May 3, 1994, from the Chemistry Review Branch to the Indirect Additives Branch, ''FAP 4A4419 (MATS #763, M2.1.1)—Kuraray International Corporation. Submission dated 4–7–94. Request of 4–20–94 from Indirect Additives Branch: Estimated exposure to 1,3-butadiene from the use of synthetic *n*-octanol.''

6. Memorandum dated July 26, 1994, from the Chemistry Review Branch to the Indirect Additives Branch, ''FAP 4A4419 (MATS #763, M2.1)—Kuraray International Corporation/Keller & Heckman. Submissions dated 4–7–94 and 4–12–94. *n*-Octanol via a new manufacturing process.''

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.864 is amended by adding paragraph (a)(3) to read as follows:

§ 172.864 Synthetic fatty alcohols.

* * * * *

(a) * * *

(3) n-Octyl; manufactured by the hydrodimerization of 1,3-butadiene, followed by catalytic hydrogenation of the resulting dienol, and distillation to produce *n*-octyl alcohol with a minimum purity of 99 percent. The analytical method for *n*-octyl alcohol entitled ''Test Method [Normal-octanol]'' dated October 2003, and printed by Kuraray Co., Ltd., is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Office of Food Additive Safety, 5100 Paint Branch Pkwy., College Park, MD 20740, or you may examine a copy at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

* * * * *

Dated: November 29, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23745 Filed 12–7–05; 8:45 am]

BILLING CODE 4160–01–S

HOUSING AND URBAN DEVELOPMENT

24 CFR Part 941

Public Housing Development

CFR Correction

In Title 24 of the Code of Federal Regulations, parts 700 to 1699, revised as of April 1, 2005, on page 381, § 941.207 is corrected by removing the parenthetical statement at the end of the section.

[FR Doc. 05–55518 Filed 12–7–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9232]

RIN 1545–BD33

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

SUMMARY: This document contains temporary regulations that provide certain elections for taxpayers that

continue to be subject to the PFIC excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(a) or (e). The regulations are necessary to provide guidance about purging the PFIC taint for such foreign corporations. The regulations will affect U.S. persons that hold stock in a PFIC. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 8, 2005.

Applicability Date: For dates of applicability, see §§ 1.1297–3T(f), 1.1298–3T(f).

FOR FURTHER INFORMATION CONTACT: Ethan Atticks at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1965. Responses to this collection of information are required to obtain a tax benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to regulations under sections 1291(d)(2), 1297(e) and 1298(b)(1). The temporary regulations provide rules for a shareholder of a foreign corporation to make a deemed sale or a deemed dividend election under section 1298(b)(1) when section 1297(e) applies to a portion of the holding period. The temporary regulations also provide rules for such shareholders, or shareholders of foreign corporations that no longer meet the income or asset tests of section 1297(a), to make late deemed sale or deemed dividend elections.

Section 1297(e), added by the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 708), provides that a foreign corporation generally is not treated as a PFIC with respect to a shareholder during the qualified portion of the shareholder's holding period in the stock of the foreign corporation. The ''qualified portion'' is the portion of the shareholder's holding period which is after December 31, 1997, and during which the shareholder is a U.S. shareholder (as defined in section 951(b)) and the foreign corporation is a controlled foreign corporation. If the qualified portion of the U.S. shareholder's holding period in the stock of the foreign corporation is less than the shareholder's entire holding period, then, notwithstanding section 1297(e), section 1298(b)(1) will apply to treat the foreign corporation as a PFIC with respect to the shareholder if at any time during the shareholder's holding period of the stock, the corporation was a PFIC that was not a QEF, and the shareholder has not made an election under section 1298(b)(1) to purge the PFIC taint under rules similar to the rules of section 1291(d)(2).

Section 1298(b)(1) provides that if a shareholder owns stock in a foreign corporation that, at any time during the shareholder's holding period with respect to such stock, was a PFIC that was not a QEF, the stock will retain its character as PFIC stock, even if the corporation later ceases to qualify as a PFIC under section 1297(a), unless the shareholder elects to purge the PFIC taint under rules similar to the rules of section 1291(d)(2).

On March 2, 1988, the IRS and Treasury Department published temporary regulations (TD 8178, 1988–1 CB 313 [53 FR 6770]), and proposed regulations that cross-referenced the temporary regulations (INTL 941–86 [53 FR 6781]), concerning the election under section 1298(b)(1) (then section 1297(b)(1)) (1988 temporary regulations). The 1988 temporary regulations permitted a shareholder of a former PFIC, as defined in § 1.1291–9(j)(2)(iv), to purge the PFIC taint by making a deemed sale election. On January 2, 1998, the IRS and Treasury Department published temporary regulations (TD 8750; 1998–8 IRB 4 [63 FR 6]) and proposed regulations that cross-referenced the temporary regulations (REG 115795–97 [63 FR 39–01]) that amended the 1988 temporary regulations. The 1998 temporary regulations provided that a shareholder of a former PFIC that was a controlled foreign corporation (as defined in section 957(a)) (CFC) during its last taxable year as a PFIC under section 1297(a), may apply the rules of the deemed dividend election under section 1291(d)(2)(B) and § 1.1291–9 to its section 1298(b)(1) election. The 1998 temporary regulations expired on January 2, 2001, pursuant to section 7805(e)(2).

Explanation of Provisions

The regulations contained in this document provide guidance on making a deemed sale or a deemed dividend election for a shareholder of a section 1297(e) PFIC. Section 1.1291–9T(j)(2)(v) defines a section 1297(e) PFIC as a foreign corporation that qualifies as a PFIC under section 1297(a) on the first day of the qualified portion of the shareholder's holding period under section 1297(e), and is also treated as a PFIC with respect to the shareholder under section 1298(b)(1) because at any time during the shareholder's holding period of the stock, other than the qualified portion, the foreign corporation was a PFIC that was not a QEF.

The deemed sale and deemed dividend election rules contained herein generally conform to the deemed sale and deemed dividend election provisions under §§ 1.1291–9 and –10, which apply to shareholders making a purging election in conjunction with a QEF election. The deemed sale and deemed dividend election rules contained in these regulations, which apply to shareholders of section 1297(e) PFICs, however, differ from those contained in §§ 1.1291–9 and –10 in several minor respects.

First, under the deemed dividend or deemed sale election rules contained in §§ 1.1291–9 and –10, the deemed dividend or the gain recognized on the deemed sale, is taxed as an excess distribution received by the shareholder on the qualification date, defined as the first day of the PFIC's first taxable year as a QEF. See § 1.1291–9T(e). Under these regulations, for purposes of a deemed dividend or deemed sale election made by a shareholder of a section 1297(e) PFIC, the deemed dividend, or the gain recognized on the deemed sale, is taxed as an excess

distribution received on the CFC qualification date. The ''CFC qualification date'' is defined in § 1.1297–3T(d) as the first day on which the qualified portion of the shareholder's holding period in the Section 1297(e) PFIC begins, as determined under section 1297(e)(3).

Second, under § 1.1291–9(a)(2), the term ''post-1986 earnings and profits'' is defined as certain undistributed earnings and profits as of the day before the qualification date. These regulations contain a similar rule. Section 1.1297–3T(c) provides, in general, that ''post-1986 earnings and profits'' means certain undistributed earnings as of the day before the CFC qualification date. Unlike the qualification date under § 1.1291–9, which is the first day of the taxable year, the CFC qualification date may be a day after the first day of the taxable year. Thus, § 1.1297–3T(c)(3)(i)(B) also contains a special rule for determining post-1986 earnings and profits when the CFC qualification date is a day after the first day of the taxable year. In such instances, the undistributed earnings and profits will be determined at the close of the taxable year that includes the CFC qualification date.

Finally, taxpayers have commented that, if a foreign corporation is a PFIC under the ''once a PFIC, always a PFIC'' rule of section 1298(b)(1) but the corporation has ceased to qualify as a PFIC under section 1297(a) or is a corporation to which section 1297(e) applies, and if the shareholder fails to make a timely purging election, the shareholder has no way to remove the PFIC taint. To address this situation, the IRS and Treasury Department also have included late election relief provisions in the regulations. These provisions, contained in §§ 1.1297–3T(e) and 1.1298–3T(e), allow shareholders of a section 1297(e) PFIC or a former PFIC to make a late deemed dividend or deemed sale election with the consent of the Commissioner, provided certain requirements are met. Under this provision, the shareholder applies the rules of §§ 1.1297–3T and 1.1298–3T as if its purging election were timely made. If the taxable year for which the purging election is made (*i.e.*, the taxable year that includes the CFC qualification date or the termination date) is a closed taxable year, the taxpayer must enter into a closing agreement to agree to eliminate any prejudice to the interests of the U.S. government as a consequence of the taxpayer's inability to file an amended return.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** New § 1.1291–9T is added to read as follows:

§ 1.1291–9T Deemed dividend election (temporary).

(a) through (j)(2)(iv) [Reserved]. For further guidance, see § 1.1291–9(a) through (j)(2)(iv).

(j)(2)(v) *Section 1297(e) PFIC.* A foreign corporation is a section 1297(e) PFIC with respect to a shareholder (as defined in § 1.1291–9(j)(3)) if:

(A) The foreign corporation qualifies as a PFIC under section 1297(a) on the first day on which the qualified portion of the shareholder's holding period in the foreign corporation begins, as determined under section 1297(e)(2); and

(B) The stock of the foreign corporation held by the shareholder is treated as stock of a PFIC, pursuant to section 1298(b)(1), because, at any time during the shareholder's holding period of the stock, other than the qualified portion, the corporation was a PFIC that was not a QEF.

(3) [Reserved]. For further guidance, see § 1.1291–9(j)(3).

(k) *Effective date.* (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 8, 2008.

■ **Par. 3.** Section 1.1297–0T is added to read as follows:

§ 1.1297–0T Table of contents (temporary).

This section contains a listing of the headings for § 1.1297–3T.

§ 1.1297–3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC (temporary).

(a) In general.
(b) Application of deemed sale election rules.
(1) Eligibility to make the deemed sale election.
(2) Effect of the deemed sale election.
(3) Time for making the deemed sale election.
(4) Manner of making the deemed sale election.
(5) Adjustments to basis.
(6) Treatment of holding period.
(c) Application of deemed dividend election rules.
(1) Eligibility to make the deemed dividend election.
(2) Effect of the deemed dividend election.
(3) Post-1986 earnings and profits defined.
(4) Time for making the deemed dividend election.
(5) Manner of making the deemed dividend election.
(6) Adjustments to basis.
(7) Treatment of holding period.
(8) Coordination with section 959(e).
(d) CFC qualification date.
(e) Late elections requiring special consent.
(1) In general.
(2) Prejudice to the interests of the U.S. government.
(3) Procedural requirements.
(4) Time and manner of making late election.
(f) Effective date.

■ **Par. 4.** Section 1.1297–3T is revised to read as follows:

§ 1.1297–3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC (temporary).

(a) *In general.* A shareholder (as defined in § 1.1291–9(j)(3)) of a foreign corporation that is a section 1297(e) PFIC (as defined in § 1.1291–9T(j)(2)(v)) with respect to such shareholder, shall be treated for tax purposes as holding stock in a PFIC and therefore continues to be subject to taxation under section

1291 unless the shareholder makes a purging election under section 1298(b)(1). A purging election under section 1298(b)(1) is made under rules similar to the rules of section 1291(d)(2). Section 1291(d)(2) allows a shareholder to purge the continuing PFIC taint by either making a deemed sale election or a deemed dividend election.

(b) *Application of deemed sale election rules:* (1) *Eligibility to make the deemed sale election.* A shareholder of a foreign corporation that is a section 1297(e) PFIC with respect to such shareholder may make a deemed sale election under section 1298(b)(1) by applying the rules of this paragraph (b).

(2) *Effect of the deemed sale election.* A shareholder making the deemed sale election with respect to a section 1297(e) PFIC shall be treated as having sold all of its stock in the section 1297(e) PFIC for its fair market value on the CFC qualification date, as defined in paragraph (d) of this section. A deemed sale under this section is treated as a disposition subject to taxation under section 1291. Thus, the gain from the deemed sale is taxed as an excess distribution received on the CFC qualification date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. After the deemed sale election, the shareholder's stock with respect to which the election was made under this paragraph (b) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Time for making the deemed sale election.* Except as provided in paragraph (e) of this section, a shareholder shall make the deemed sale election under this paragraph (b) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed sale election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(4) *Manner of making the deemed sale election.* A shareholder makes the deemed sale election under this paragraph (b) by filing Form 8621 (''Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'') with the return of the shareholder for the election year, reporting the gain as an excess distribution pursuant to section 1291(a) as if such sale occurred under section 1291(d)(2), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(5) *Adjustments to basis.* A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the basis of any stock with respect to which the shareholder realized a loss on the deemed sale, which loss is not recognized under paragraph (b)(2) of this section.

(6) *Treatment of holding period.* If a shareholder of a foreign corporation has made a deemed sale election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed sale, the shareholder's holding period in the stock of the foreign corporation begins on the CFC qualification date, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(c) *Application of deemed dividend election rules:* (1) *Eligibility to make the deemed dividend election.* A shareholder of a foreign corporation that is a section 1297(e) PFIC with respect to such shareholder may make the deemed dividend election under the rules of this paragraph (c). A deemed dividend election may be made by a shareholder whose pro rata share of the post-1986 earnings and profits of the PFIC attributable to the PFIC stock held on the CFC qualification date is zero.

(2) *Effect of the deemed dividend election.* A shareholder making the deemed dividend election with respect to a section 1297(e) PFIC shall include in income as a dividend its pro rata share of the post-1986 earnings and profits of the PFIC attributable to all of the stock it held, directly or indirectly on the CFC qualification date, as defined in paragraph (d) of this section. The deemed dividend is taxed under section 1291 as an excess distribution received on the CFC qualification date. The excess distribution determined under this paragraph (c) is allocated under section 1291(a)(1)(A) only to each day of the shareholder's holding period of the stock during which the foreign corporation qualified as a PFIC. For purposes of the preceding sentence, the shareholder's holding period of the PFIC stock ends on the day before the CFC qualification date. After the deemed dividend election, the shareholder's stock with respect to which the election was made under this paragraph (c) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the qualified portion of the shareholder's holding period ends, as determined under section 1297(e)(2), and the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Post-1986 earnings and profits defined:* (i) *In general*—(A) *General rule.* For purposes of this section, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the day before the CFC qualification date, that were accumulated and not distributed in taxable years of the PFIC beginning after 1986 and during which it was a PFIC, without regard to whether the earnings related to a period during which the PFIC was a CFC.

(B) *Special rule.* If the CFC qualification date is a day that is after the first day of the taxable year, the term post-1986 earnings and profits means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the close of the taxable year that includes the CFC qualification date. For purposes of this computation, only earnings and profits accumulated

in taxable years during which the foreign corporation was a PFIC shall be taken into account, but without regard to whether the earnings related to a period during which the PFIC was a CFC.

(ii) *Pro rata share of post-1986 earnings and profits attributable to shareholder's stock:* (A) *In general.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC attributable to the stock held by the shareholder on the CFC qualification date is the amount of post-1986 earnings and profits of the PFIC accumulated during any portion of the shareholder's holding period ending at the close of the day before the CFC qualification date and attributable, under the principles of section 1248 and the regulations under that section, to the PFIC stock held on the CFC qualification date.

(B) *Reduction for previously taxed amounts.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC does not include any amount that the shareholder demonstrates to the satisfaction of the Commissioner (in the manner provided in paragraph (c)(5)(ii) of this section) was, pursuant to another provision of the law, previously included in the income of the shareholder, or of another U.S. person if the shareholder's holding period of the PFIC stock includes the period during which the stock was held by that other U.S. person.

(4) *Time for making the deemed dividend election.* Except as provided in paragraph (e) of this section, the shareholder shall make the deemed dividend election under this paragraph (c) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the CFC qualification date (election year). If the deemed dividend election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(5) *Manner of making the deemed dividend election:* (i) *In general.* A shareholder makes the deemed dividend election by filing Form 8621 and the attachment to Form 8621 described in paragraph (c)(5)(ii) of this section with the return of the shareholder for the election year, reporting the deemed dividend as an excess distribution pursuant to section 1291(a)(1), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year.

(ii) *Attachment to Form 8621.* The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the CFC qualification date, pursuant to this paragraph (c). If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(A) The name, address and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of law, pursuant to which the amount was previously included in income, and the taxable year or years of inclusion of each amount.

(B) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provision of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(6) *Adjustments to basis.* A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(7) *Treatment of holding period.* If the shareholder of a foreign corporation has made a deemed dividend election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed dividend, the shareholder's holding period of the stock of the foreign corporation begins on the CFC qualification date. For other purposes of the Code and regulations, this holding period rule does not apply.

(8) *Coordination with section 959(e).* For purposes of section 959(e), the entire deemed dividend is treated as having been included in gross income under section 1248(a).

(d) *CFC qualification date.* For purposes of this section, the CFC qualification date is the first day on which the qualified portion of the shareholder's holding period in the section 1297(e) PFIC begins, as determined under section 1297(e).

(e) *Late elections requiring special consent*: (1) *In general.* This section prescribes the exclusive rules under which a shareholder of a section 1297(e) PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(2) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including § 301.9100–3 of this chapter. A shareholder may request the consent of the Commissioner to make a late deemed sale or deemed dividend election for the taxable year of the shareholder that includes the CFC qualification date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if:

(i) In a case where the shareholder is requesting consent under this paragraph (e) after December 31, 2005, the shareholder requests such consent before a representative of the Internal Revenue Service raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the CFC qualification date falls, or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) *Prejudice to the interests of the U.S. government.* The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability (other than by a *de minimis* amount), taking into account applicable interest

charges, for the taxable year that includes the CFC qualification date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) *Procedural requirements:* (i) *In general.* The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the CFC qualification date falls and ending on the date the late purging election is filed with the IRS.

(ii) *Filing instructions.* A late purging election is made by filing a completed Form 8621–A, ''Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.''

(4) *Time and manner of making late election:* (i) *Time for making a late purging election.* A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) *Manner of making a late purging election.* A shareholder makes a late purging election by completing Form 8621–A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621–A, Ogden, UT 84201.

(f) *Effective date.* (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 8, 2008.

■ **Par. 5.** Section 1.1298–0T is added to read as follows:

§ 1.1298–0T Table of contents (temporary).

This section contains a listing of the paragraph headings for § 1.1298–3T.

§ 1.1298–3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.1298–0, the entries for § 1.1298–3T(a) through (d).

(e) Late purging elections requiring special consent.

(1) In general.

(2) Prejudice to the interests of the U.S. government.

(3) Procedural requirement.

(4) Time and manner of making late election.

(f) Effective date.

■ **Par. 6.** Section 1.1298–3T is added to read as follows:

§ 1.1298–3T Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC (temporary).

(a) through (d) [Reserved]. For further guidance see § 1.1298–3(a) through (d).

(e) *Late purging elections requiring special consent*—(1) *In general.* This section prescribes the exclusive rules under which a shareholder of a former PFIC may make a section 1298(b)(1) election after the time prescribed in paragraph (b)(2) or (c)(4) of this section for making a deemed sale or a deemed dividend election has elapsed (late purging election). Therefore, a shareholder may not seek such relief under any other provisions of the law, including § 301.9100–3 of this chapter. A shareholder may request the consent of the Commissioner to make a late purging election for the taxable year of the shareholder that includes the termination date provided the shareholder satisfies the requirements set forth in this paragraph (e). The Commissioner may, in his discretion, grant relief under this paragraph (e) only if:

(i) In a case where the shareholder is requesting consent under this paragraph (e) after December 31, 2005, the shareholder requests such consent before a representative of the Internal Revenue Service raises upon audit the PFIC status of the foreign corporation for any taxable year of the shareholder;

(ii) The shareholder has agreed in a closing agreement with the Commissioner, described in paragraph (e)(3) of this section, to eliminate any prejudice to the interests of the U.S. government, as determined under paragraph (e)(2) of this section, as a consequence of the shareholder's inability to file amended returns for its taxable year in which the termination date falls, or an earlier closed taxable year in which the shareholder has taken a position that is inconsistent with the treatment of the foreign corporation as a PFIC; and

(iii) The shareholder satisfies the procedural requirements set forth in paragraph (e)(3) of this section.

(2) *Prejudice to the interests of the U.S. government.* The interests of the U.S. government are prejudiced if granting relief would result in the shareholder having a lower tax liability (other than by a de minimis amount), taking into account applicable interest charges, for the taxable year that includes the termination date (or a prior taxable year in which the taxpayer took a position on a return that was inconsistent with the treatment of the foreign corporation as a PFIC) than the shareholder would have had if the shareholder had properly made the section 1298(b)(1) election in the time prescribed in paragraph (b)(2) or (c)(3) of this section (or had not taken a position in a return for an earlier year that was inconsistent with the status of the foreign corporation as a PFIC). The time value of money is taken into account for purposes of this computation.

(3) *Procedural requirement:* (i) *In general.* The amount due with respect to a late purging election is determined in the same manner as if the purging election had been timely filed. However, the shareholder is also liable for interest on the amount due, determined for the period beginning on the due date (without extensions) for the taxpayer's income tax return for the year in which the CFC qualification date falls and ending on the date the late purging election is filed with the IRS.

(ii) *Filing instructions.* A late purging election is made by filing a completed Form 8621–A, ''Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.''

(4) *Time and manner of making late election:* (i) *Time for making a late purging election.* A shareholder may make a late purging election in the manner provided in paragraph (e)(4)(ii) of this section at any time. The date the election is filed with the IRS will determine the amount of interest due under paragraph (e)(3) of this section.

(ii) *Manner of making a late purging election.* A shareholder makes a late purging election by completing Form 8621–A in the manner required by that form and this section and filing that form with the Internal Revenue Service, DP 8621–A, Ogden, UT 84201.

(f) *Effective date.* (1) The rules of this section are applicable as of December 8, 2005.

(2) The applicability of this section will expire on or before December 8, 2008.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation of part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

■ **Par. 8.** In § 602.101, paragraph (b) is amended by revising an entry in the table for ''1.1297–3T'' as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where Identified and described	Current OMB control No.
* * * * *	
1.1297–3T	1545–1965
* * * * *	

Approved: November 21, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–23630 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9231]

RIN 1545–BC49

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide specific elections that give relief to certain United States persons that continue to be subject to the PFIC excess distribution regime of section 1291 even though the foreign corporation in which they hold stock no longer satisfies the definition of a PFIC under section 1297(a). The final regulations affect U.S. persons owning stock in a PFIC.

DATES: *Effective Date:* These regulations are effective December 8, 2005.

Applicability Date: For dates of applicability, see § 1.1298–3(f).

FOR FURTHER INFORMATION CONTACT: Ethan Atticks at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1028, which was later incorporated into control number 1545–1507.

The collection of information in these final regulations is in § 1.1298–3(c)(5). This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income, gain or loss from that taxpayer's interest in the foreign corporation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final regulations under section 1298(b)(1). Section 1298(b)(1) was originally enacted as section 1297 by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) and was redesignated as section 1298 by the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788).

Section 1298(b)(1) provides that if a shareholder owns stock in a foreign corporation that, at any time during the shareholder's holding period with respect to such stock, was a PFIC that was not a qualified electing fund (QEF), the stock will retain its character as PFIC stock, even if the corporation later ceases to qualify as a PFIC under section 1297(a), unless the shareholder elects to purge the PFIC taint under rules similar to the rules of section 1291(d)(2).

On March 2, 1988, the IRS and Treasury Department published temporary regulations (TD 8178, 1988–1 CB 313 [53 FR 6770]), and proposed regulations that cross-referenced the temporary regulations (INTL 941–86 [53 FR 6781]), concerning the election under section 1298(b)(1) (then section 1297(b)(1)) (1988 temporary regulations). The 1988 temporary regulations permitted a shareholder of a former PFIC, as defined in § 1.1291–9(j)(2)(iv), to purge the PFIC taint by making a deemed sale election. On January 2, 1998, the IRS and Treasury Department published temporary regulations (TD 8750; 1998–8 IRB 4 [63 FR 6]) and proposed regulations that cross-referenced the temporary regulations (REG 115795–97 [63 FR 39–01]) that amended the 1988 temporary regulations. The 1998 temporary regulations provided that a shareholder of a former PFIC that was a controlled foreign corporation (as defined in section 957(a)) during its last taxable year as a PFIC under section 1297(a), may apply the rules of the deemed dividend election under section 1291(d)(2)(B) and § 1.1291–9 to its section 1298(b)(1) election. The 1998 temporary regulations expired on January 2, 2001, pursuant to section 7805(e)(2).

One written comment was received regarding the deemed sale election in response to the notice of proposed rulemaking published by cross-reference to the 1988 regulations. No public hearing was requested or held on the notice of proposed rulemaking. After consideration of the comment, the 1988 temporary regulations, as modified by the 1998 temporary regulations that permit a deemed dividend election in certain circumstances, are adopted as final regulations with the changes discussed below.

Summary of Comments and Explanation of Revisions

A. Time and Manner of Making the Deemed Sale Election

One comment was received on the 1988 temporary regulations regarding the deemed sale election under § 1.1297–3T. The comment recommended that the regulations permit a shareholder to make a deemed sale election without having to file an amended return in instances where an election could be filed by the due date of the shareholder's original return for the last taxable year during which the foreign corporation continued to qualify as a PFIC under section 1297(a). This suggestion was adopted with respect to both the deemed sale and deemed dividend elections, and the regulations have been revised accordingly.

B. Additional Revisions

Additional revisions were made to the final regulations to reflect the redesignation of certain Code sections pursuant to the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788). Similar revisions were made to the definition of former PFIC contained in

§ 1.1291–9(j)(2)(iv). In addition, the deemed dividend election provisions were added and the deemed sale election provisions were revised to conform generally the elections under section 1298(b)(1) to the deemed dividend and deemed sale election provisions contained in §§ 1.1291–9 and −10 (purging elections in connection with election to treat PFIC as a QEF).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1291–9 is amended as follows:

■ 1. Paragraph (i)(1) is removed.

■ 2. The paragraph heading of paragraph (i)(2) is removed.

■ 3. The text of paragraph (i)(2) is redesignated as paragraph (i).

■ 4. Paragraph (j)(2)(iv) is revised.

■ 5. Paragraph (j)(2)(v) is added.

The revision and addition reads as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(2) * * *

(iv) *Former PFIC.* A foreign corporation is a former PFIC with respect to a shareholder if the corporation satisfies neither the income test of section 1297(a)(1) nor the asset test of section 1297(a)(2), but its stock, held by that shareholder, is treated as stock of a PFIC, pursuant to section 1298(b)(1), because the corporation was a PFIC that was not a QEF at some time during the shareholder's holding period of the stock.

(v) *Section 1297(e) PFIC.* [Reserved]. For further guidance, see § 1.1291–9T(j)(2)(v).

* * * * *

■ **Par. 3.** Section 1.1297–0 is revised to read as follows:

§ 1.1297–0 Table of contents.

This section contains a listing of the paragraph headings for § 1.1297–3.

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC. [Reserved]. For further guidance, see the entries in § 1.1297–3T.

■ **Par. 4.** Section 1.1297–3 is added to read as follows:

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC.

[Reserved]. For further guidance, see § 1.1297–3T.

■ **Par. 5.** Sections 1.1298–0 and 1.1298–3 are added to read as follows:

§ 1.1298–0 Table of contents.

This section contains a listing of the paragraph headings for § 1.1298–3.

§ 1.1298–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

(a) In general.

(b) Application of deemed sale election rules.

(1) Eligibility to make the deemed sale election.

(2) Effect of deemed sale election.

(3) Time for making the deemed sale election.

(4) Manner of making the deemed sale election.

(5) Adjustments to basis.

(6) Treatment of holding period.

(c) Application of deemed dividend election rules.

(1) Eligibility to make the deemed dividend election.

(2) Effect of the deemed dividend election.

(3) Post-1986 earnings and profits defined.

(4) Time for making the deemed dividend election.

(5) Manner of making the deemed dividend election.

(6) Adjustments to basis.

(7) Treatment of holding period.

(8) Coordination with section 959(e).

(d) Termination date.

(e) Late purging elections requiring special consent. [Reserved]. For further guidance, see § 1.1298–0T.

(f) Effective date.

§ 1.1298–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

(a) *In general.* A shareholder (as defined in § 1.1291–9(j)(3)) of a foreign corporation that is a former PFIC, (as defined in § 1.1291–9(j)(2)(iv)) with respect to such shareholder, shall be treated for tax purposes as holding stock in a PFIC and therefore continues to be subject to taxation under section 1291 unless the shareholder makes a purging election under section 1298(b)(1). A purging election under section 1298(b)(1) is made under rules similar to the rules of section 1291(d)(2). Section 1291(d)(2) allows a shareholder to purge the continuing PFIC taint by making either a deemed sale election or a deemed dividend election.

(b) *Application of deemed sale election rules:* (1) *Eligibility to make the deemed sale election.* A shareholder of a foreign corporation that is a former PFIC with respect to such shareholder may make a deemed sale election under section 1298(b)(1) by applying the rules of this paragraph (b).

(2) *Effect of deemed sale election.* A shareholder making the deemed sale election with respect to a former PFIC shall be treated as having sold all its stock in the former PFIC for its fair market value on the termination date, as defined in paragraph (d) of this section. A deemed sale is treated as a disposition subject to taxation under section 1291. Thus, gain from the deemed sale is taxed under section 1291 as an excess distribution received on the termination date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. After the deemed sale election, the shareholder's stock with respect to which the election was made under this paragraph (b) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the foreign

corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Time for making the deemed sale election.* Except as provided in paragraph (e) of this section, the shareholder shall make the deemed sale election under this paragraph (b) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the termination date (election year). If the deemed sale election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(4) *Manner of making the deemed sale election.* A shareholder makes the deemed sale election under this paragraph (b) by filing Form 8621 (''Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'') with the return of the shareholder for the election year, reporting the gain as an excess distribution pursuant to section 1291(a) as if such deemed sale occurred under section 1291(d)(2), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(5) *Adjustments to basis.* A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the basis of any stock with respect to which the shareholder realized a loss on the deemed sale, but which loss is not recognized under paragraph (b)(2) of this section.

(6) *Treatment of holding period.* If a shareholder of a foreign corporation has made a deemed sale election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed sale, the shareholder's holding period in the stock of the foreign corporation begins on the day following the termination, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(c) *Application of deemed dividend election rules:* (1) *Eligibility to make the deemed dividend election.* A shareholder of a foreign corporation that is a former PFIC with respect to such shareholder may make the deemed dividend election under the rules of this paragraph (c) provided the foreign corporation was a controlled foreign corporation (as defined in section 957(a) (CFC)) during its last taxable year as a PFIC. A shareholder may make the deemed dividend election without regard to whether the shareholder is a United States shareholder within the meaning of section 951(b). A deemed dividend election may be made by a shareholder whose pro rata share of the post-1986 earnings and profits of the PFIC attributable to the PFIC stock held on the termination date is zero.

(2) *Effect of the deemed dividend election.* A shareholder making the deemed dividend election with respect to a former PFIC shall include in income as a dividend its pro rata share of the post-1986 earnings and profits of the PFIC attributable to all of the stock it held, directly or indirectly on the termination date, as defined in paragraph (d) of this section. The deemed dividend is taxed under section 1291 as an excess distribution received on the termination date. The excess distribution determined under this paragraph (c) is allocated under section 1291(a)(1)(A) only to each day of the shareholder's holding period of the stock during which the foreign corporation qualified as a PFIC. For purposes of the preceding sentence, the shareholder's holding period of the PFIC stock ends on the termination date. After the deemed dividend election, the shareholder's stock with respect to which the election was made under this paragraph (c) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Post-1986 earnings and profits defined:* (i) *In general.* For purposes of this section, the term *post-1986 earnings and profits* means the post-1986 undistributed earnings, within the meaning of section 902(c)(1) (determined without regard to section 902(c)(3)), as of the close of the taxable year that includes the termination date. For purposes of this computation, only earnings and profits accumulated in taxable years during which the foreign corporation was a PFIC shall be taken into account, without regard to whether the earnings relate to a period during which the PFIC was a CFC.

(ii) *Pro rata share of post-1986 earnings and profits attributable to shareholder's stock:* (A) *In general.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC attributable to the stock held by the shareholder on the termination date is the amount of post-1986 earnings and profits of the PFIC accumulated during any portion of the shareholder's holding period ending at the close of the termination date and attributable, under the principles of section 1248 and the regulations under that section, to the PFIC stock held on the termination date.

(B) *Reduction for previously taxed amounts.* A shareholder's pro rata share of the post-1986 earnings and profits of the PFIC does not include any amount that the shareholder demonstrates to the satisfaction of the Commissioner (in the manner provided in paragraph (c)(5)(ii) of this section) was, pursuant to another provision of the law, previously included in the income of the shareholder, or of another U.S. person if the shareholder's holding period of the PFIC stock includes the period during which the stock was held by that other U.S. person.

(4) *Time for making the deemed dividend election.* Except as provided in paragraph (e) of this section, the shareholder shall make the deemed dividend election under this paragraph (c) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the termination date (election year). If the deemed dividend election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(5) *Manner of making the deemed dividend election:* (i) *In general.* A shareholder makes the deemed dividend election by filing Form 8621 and the attachment to Form 8621 described in paragraph (c)(5)(ii) of this section with the return of the shareholder for the election year, reporting the deemed dividend as an excess distribution pursuant to section 1291(a)(1), and

paying the tax and interest due on the excess distribution. A shareholder that makes the deemed dividend election after the due date of the return (determined without regard to extensions) for the election year must pay additional interest, pursuant to section 6601, on the amount of underpayment of tax for that year.

(ii) *Attachment to Form 8621.* The shareholder must attach a schedule to Form 8621 that demonstrates the calculation of the shareholder's pro rata share of the post-1986 earnings and profits of the PFIC that is treated as distributed to the shareholder on the termination date pursuant to this paragraph (c). If the shareholder is claiming an exclusion from its pro rata share of the post-1986 earnings and profits for an amount previously included in its income or the income of another U.S. person, the shareholder must include the following information:

(A) The name, address, and taxpayer identification number of each U.S. person that previously included an amount in income, the amount previously included in income by each such U.S. person, the provision of law pursuant to which the amount was previously included in income, and the taxable year or years of inclusion of each amount.

(B) A description of the transaction pursuant to which the shareholder acquired, directly or indirectly, the stock of the PFIC from another U.S. person, and the provision of law pursuant to which the shareholder's holding period includes the period the other U.S. person held the CFC stock.

(6) *Adjustments to basis.* A shareholder that makes the deemed dividend election increases its adjusted basis of the stock of the PFIC owned directly by the shareholder by the amount of the deemed dividend. If the shareholder makes the deemed dividend election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of the deemed dividend. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of the deemed dividend.

(7) *Treatment of holding period.* If the shareholder of a foreign corporation has made a deemed dividend election, then, for purposes of applying sections 1291 through 1298 to such shareholder after the deemed dividend, the shareholder's holding period of the stock of the foreign corporation begins on the day following the termination date. For other purposes of the Code and regulations, this holding period rule does not apply.

(8) *Coordination with section 959(e).* For purposes of section 959(e), the entire deemed dividend is treated as having been included in gross income under section 1248(a).

(d) *Termination date.* For purposes of this section, the termination date is the last day of the last taxable year of the foreign corporation during which it qualified as a PFIC under section 1297(a).

(e) *Late purging elections requiring special consent.* [Reserved]. For further guidance, see § 1.1298–3T(e).

(f) *Effective date.* This section applies for taxable years of shareholders beginning on or after December 8, 2005. However, taxpayers may apply the rules of this section to a taxable year beginning prior to December 8, 2005, provided the statute of limitations on the assessment of tax has not expired.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 6.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 7.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1298–3	1545–1507
* * * * *	

Approved: November 21, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–23629 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 346

Department of Defense Education Activity (DoDEA)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes 32 CFR Part 346, ''DoD Education Activity''. This part has served the purpose for which it was intended and is no longer needed. A copy of DoD Directive 1342.20, ''Department of Defense Education Activity (DoDEA),'' is available at *http://www.dtic.mil/whs/directives/*.

EFFECTIVE DATE: This rule is effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum 703–696–4970.

List of Subjects in 32 CFR Part 346

Education, Military personnel, Organization and functions (Government agencies).

PART 346—[REMOVED]

■ For reasons set forth in the preamble, under the authority of 10 U.S.C. 131, 32 CFR Part 346 is removed.

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 05–23768 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[OAR–2004–0011; FRL 8004–7]

RIN 2060–AM32

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulations, and Vehicle Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to make changes to certain provisions of the evaporative and refueling emission regulations for light-duty vehicles, light-duty trucks and heavy-duty vehicles up to 14,000

pounds GVWR, the four-wheel drive dynamometer test provisions, and the vehicle labeling regulations. The evaporative changes are intended to: reduce manufacturers' certification evaporative/refueling test burden; clarify existing evaporative/refueling requirements; and better harmonize federal evaporative/refueling test procedures with California evaporative/refueling test procedures. The dynamometer changes are intended to amend outdated regulations to now include four-wheel drive provisions. The labeling changes are intended to amend regulations to remove outdated information. Today's action does not change the stringency of these existing programs.

DATES: Today's action will be effective on February 6, 2006, without further notice unless we receive adverse comment by January 9, 2006, or a request for a public hearing by December 23, 2005. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0011, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Fax: (202) 566–1741.
- Mail: Docket ID No. OAR–2004–0011, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Docket ID No. OAR–2004–0011, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the fax number for the Air Docket and Reading Room for OAR–2004–0011 is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Certification and Compliance Division, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4851; fax number: (734) 214–4053; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are free of charge, except any cost that you already incur for connecting to the Internet.

EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site: *http://www.epa.gov/otaq/* (look in What's New or under specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

Regulated Entities: Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 86. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111, 336112, 336120	3711	Automobile and Light Duty Motor Vehicle Manufacturing Heavy Duty Truck Manufacturing.

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

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I. Overview

Today's action pertains to the Evaporative Emissions Test Procedure (58 FR 16002, March 24, 1992) and the Onboard Refueling Vapor Recovery Procedure (59 FR 16262, April 6, 1994) for light-duty vehicles, light duty trucks, and heavy-duty gasoline vehicles up to 14,000 GVWR; the dynamometer test provisions (40 CFR 86.135–90, 40 CFR 86.159–00, 40 CFR 86.160–00); and the Vehicle Labeling requirements (40 CFR 86.098–35, 40 CFR 86.1807–01). Today's action includes minor revisions to the evaporative test procedures, which are intended to reduce testing burden associated with conducting evaporative test procedures without affecting the level of stringency. Today's action includes minor revisions to clarify evaporative emissions testing regulations; to harmonize EPA and California evaporative requirements; to allow use of a four-wheel drive dynamometer; and to no longer require out-dated information on vehicle labels. Although we provide some context in the following discussions, a full discussion of the evaporative test procedures is outside the scope of this direct final rule. Readers are advised to consult the documents associated with these rulemakings to obtain the details of these rules.

The remainder of this document is divided into the following sections: Section II provides a detailed description of today's action. Sections III through IV describe the Statutory and Executive Order Reviews and Statutory Provisions and Legal Authority.

Background

1. The 1996 Model Year and Later Enhanced Evaporative Test Procedure

The enhanced evaporative emission test procedure for 1996 model year and later passenger cars, light-duty trucks and heavy-duty vehicles measures emissions from fuel evaporation during simulated overnight parking experiences (diurnal emissions), during vehicle operations (running loss emissions), and immediately following a drive (hot soak emissions).

The enhanced evaporative test procedure includes a sequence of three basic elements: (1) An initial loading of the evaporative canister with fuel vapor; (2) a period of driving to provide an opportunity to purge the canister; and (3) a simulation of repeated hot days of parking. By following this sequence and sampling evaporative emissions during hot soak, running loss and parking simulation, the test ensures that the vehicle can quickly regain canister storage capacity during driving and provides further assurance that vehicles will effectively control evaporative emissions for most in-use events. The enhanced evaporative test procedure also includes a test procedure to measure fuel spillage during refueling, called spitback. The 1996 and later model year enhanced evaporative test procedures follow.

a. Three-Day Diurnal-plus-Hot-Soak Test Sequence. Each of the three-day diurnal plus hot-soak (three-diurnal) test elements corresponds to an aspect of in-use vehicle operation in ozone-prone summertime conditions. The exhaust emission test following vehicle preconditioning corresponds to vehicle operation while vapors from a loaded evaporative canister are purged into the engine, as might occur during driving after a prolonged period of parking. The running loss test element corresponds to sustained vehicle operation on a hot day. The hot soak element corresponds to the emission-prone period immediately following engine shut-off. The diurnal heat builds correspond to successive days of parking in hot weather and also serve to control fuel system permeation emissions, called resting losses.

The purpose of the running loss test is to measure evaporative emissions during vehicle operation to assure that vehicles can control fuel vapors generated in use. In order to perform the running loss test, auto manufacturers must separately develop a fuel temperature profile for the running loss test. The fuel temperature profile is used as a target during the running loss test to duplicate the heating of the vehicle's fuel tank during onroad driving in representative summer conditions. Each fuel temperature profile is generated by obtaining a fuel temperature versus time trace as the vehicle is driven over the prescribed running loss driving cycle, during sunny, summertime conditions, *e.g.* at 95 °F ambient temperature, on the road. During the running loss test, thermocouples are placed inside the fuel tank to measure and monitor the fuel temperature.

b. Two-Day Diurnal-plus-Hot-Soak Test Sequence. The two-day diurnal-plus-hot-soak (two-diurnal) test sequence is a supplemental evaporative test procedure, consisting of vehicle preconditioning, canister preconditioning, FTP exhaust test, hot soak at 68–86 °F, and two diurnal heat builds. The two-diurnal test sequence is similar to the three-diurnal but excludes the running loss test. Instead, without the running loss portion of the test procedure, the two diurnal heat builds after the exhaust emission test verify that the evaporative canister is sufficiently purged during the exhaust emission test, which simulates short trips (58 FR 16003, March 23, 1993). ''Eliminating a diurnal heat build, initially loading the evaporative canister only to breakthrough, measuring a moderate temperature hot soak, and increasing the standard from 2 to 2.5 grams all contribute significantly to making the [two-diurnal test] procedure effective in its limited objective of

ensuring proper purge without requiring additional design modifications'' (58 FR 16001, March 24, 1993). The three-diurnal test sequence does not test for canister purge as effectively as the two-diurnal test sequence due to the addition of the running loss test, which occurs between the FTP exhaust test and diurnal heat builds. Since exhaust emissions are not measured during running loss, it cannot be determined if canister purging occurred only during the FTP exhaust cycle (58 FR 16001, March 24, 1993).

c. Spitback Test Procedure. The spitback test procedure assures that vehicles' fuel fill necks are adequately designed to accommodate in-use fuel fill rates, so as to limit fuel spillage when refueling a vehicle.

2. The 1998 and Later Onboard Refueling Vapor Recovery (ORVR) Test Procedure

A separate evaporative test procedure, the Onboard Refueling Vapor Recovery (ORVR) test procedure, was developed to measure refueling emissions from vehicles. On January 24, 1994, EPA adopted onboard vehicle refueling requirements for passenger cars and light-duty trucks (59 FR 16262, April 6, 1994). EPA also adopted similar ORVR requirements for complete heavy-duty vehicles less than 10,000 lbs. GVWR (65 FR 59896, October 6, 2000). The main purpose of the ORVR test is to limit hydrocarbon vapors released during refueling events. The ORVR test procedure also accounts for spitback emissions in the overall emission measurements, reducing the necessity for a separate spitback test procedure (59 FR 16262, April 6, 1994).

3. Evaporative Test Procedures Similarities

The enhanced evaporative test procedure is important for measuring evaporative emissions from vehicles under numerous drive and park conditions, and the ORVR test is important for measuring refueling emissions from vehicles. In some cases, similar parameters are tested by these test procedures. The two-diurnal and three-diurnal test sequences both test canister capacity, permeation control, and canister purge capacity. The three-diurnal test sequence also tests hot drive vapor generation (running loss) and high temperature vapor generation. The ORVR test procedure tests canister capacity and canister purge capacity, in addition to refueling vapor generation and fill pipe losses. The two-diurnal test procedure takes approximately four days; the three-diurnal takes five days; the spitback takes one day; and the ORVR takes three days. Thus, performing all four test procedures requires a minimum of 12 days since the spitback test is often waived. EPA believes it is appropriate to streamline the evaporative test procedure to reduce testing burden and to reduce overlapping procedures without affecting the level of stringency.

EPA, California Air Resources Board (ARB), and the automobile industry have collaborated since 1996 to identify portions of these test procedures that can be streamlined and/or harmonized, and the discussions culminated in EPA Guidance Letter CCD–02–20, December 31, 2002, available on the Internet at *http://www.epa.gov/otaq/cert/dearmfr/dearmfr.htm.* The Guidance Letter clarified portions of evaporative emission test procedure and also suggested minor modifications to the test procedure which could be made via a direct rulemaking. Today's action codifies the suggested modifications and finalizes the clarifications to the evaporative and refueling test procedures. Today's action does not affect the stringency of the current requirements.

4. Dynamometer Test Provisions

The current dynamometer test procedures (86.139–90, 86.159–00, and 86.160–00) date from a time when four-wheel drive dynamometers were not widely available for measurement of exhaust emissions and fuel economy. Changes in technology for modern four-wheel and all-wheel drive vehicles have heightened the need for testing these vehicles on a four-wheel drive dynamometer. It is no longer easy to configure certain four-wheel or all-wheel drive certification vehicles for testing on a two-wheel drive dynamometer. The need for four-wheel drive dynamometer tests also includes hybrid vehicles with sophisticated regenerative braking systems that cannot receive a representative test on a two-wheel drive dynamometer.

5. Vehicle Labeling

86.1807–01 contains the labeling requirements for vehicles, which include light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles which are chassis certified. 86.098–35 previously applied to vehicle and engine labeling, but since the 2001 model year apply only to heavy-duty engine labeling. The labels' basic content requirements date from a time when vehicles were designed with manually adjustable tune-up settings, including idle speed(s), ignition timing, air-fuel mixture, injection timing, and valve lash, and did not use an exhaust catalyst. Modern vehicles and engines are electronically controlled, making a listing of tune-up specifications unnecessary. As well, leaded fuel was still widely available in the U.S. at the time of the label requirements. The labels have not been updated since the introduction of catalyst technology almost 30 years ago.

II. List of Changes to Test Procedures

Today's action describes minor modifications and clarifications made to the evaporative test procedures, dynamometer regulations, and vehicle labeling requirements. Explanation and, where appropriate, EPA's interpretation of the resulting regulatory language is provided.

A. Evaporative Test Procedures

1. Provide Opportunity To Waive the Two-Day Evaporative Test for Certification Tests Under Certain Conditions

a. Current Procedure. The current two-diurnal enhanced evaporative test procedure is part of the overall enhanced evaporative emission test procedure (58 FR 16001, March 24, 1993). Currently, manufacturers are expected to complete three-diurnal, two-diurnal, and ORVR tests on certification vehicles.

b. Today's Action. Today's action provides manufacturers with an option which will allow a waiver from the two-day diurnal-plus-hot-soak evaporative emission certification test. Manufacturers must still perform three-diurnal and ORVR tests for certification vehicles and perform the two-diurnal and ORVR test on vehicles for the In-Use Verification Program (40 CFR 1845–01, 1845–04). EPA may perform at its discretion confirmatory two-diurnal evaporative emission testing on certification test vehicles which are certified using this option, even though the manufacturer may not have performed a two-diurnal test during the certification process.

Manufacturers may use the waiver based on good engineering judgement that the canister will be adequately purged during the FTP exhaust test and comply with the two-diurnal emission standard. Manufacturers will need to provide a statement in the certification application stating: ''Based on the manufacturer's engineering evaluation of appropriate evaporative emission testing, all vehicles in [a specific evaporative/refueling family] will comply with the applicable two-day evaporative emission standard.''

EPA may request data from the manufacturers demonstrating that the purge flow rate calibration on the two-diurnal tests adequately purges the canister to comply with the evaporative emission standard for the supplemental two-day test in lieu of actual two-day evaporative test data. Such information may include, but is not limited to, canister type, canister volume, canister working capacity, fuel tank volume, fuel tank geometry, the type of fuel delivery system (return, returnless, variable flow fuel pump, etc.), a description of the input parameters and software strategy used to control the evaporative canister purge, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 2-day (FTP) driving cycle, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 3-diurnal (FTP + running loss) driving cycle, and other supporting information as necessary. This information will address EPA's concerns about vehicles sufficiently purging the canister, as expressed in 58 FR 16009–11, March 24, 1993. As well, this information will be useful in selecting EPA in-class testing vehicles and be helpful for determining potential evaporative defeat devices.

This testing waiver option will only be available to current technology gasoline-fueled and ethanol-fueled vehicles which use conventional evaporative emission control systems, *e.g.* vehicles equipped with conventional fuel tank materials, liquid seal ORVR systems, and carbon canister(s). Currently all light-duty and heavy-duty up to 14,000 GVWR vehicles certified in the U.S. use an integrated evaporative/refueling emission control system. For this reason, EPA does not expect the waiver to be used for non-integrated evaporative/refueling emission control system. If non-integrated systems become more common and in-use data can demonstrate with confidence that the vast majority of such vehicles are in compliance with evaporative emission standards, then testing waivers may be used for non-integrated systems as well in the future.

c. Reason for Action. EPA believes that there will be very little risk of noncompliance for several reasons.

Manufacturers will continue to be responsible for meeting the two-day diurnal-plus-hot-soak emission standards even if they waive the two-diurnal certification test procedure. In addition, vehicles must still meet the three-diurnal and ORVR test requirements which provide data to EPA on many aspects of the two-diurnal test procedure since the three-diurnal test procedure is similar to the two-diurnal test procedure, except for canister purge. However canister purge assurance is an inherent part of the ORVR test procedure. Thus the combination of three-diurnal and ORVR certification data assure adequate canister purge.

EPA believes that compliance with the two-diurnal standards is further assured because EPA may perform at its discretion confirmatory two-diurnal evaporative emission testing on certification test vehicles which are certified using this option. In addition to EPA's confirmatory testing, a vehicle randomly selected from each evaporative family will be tested using the two-diurnal evaporative test procedure under the In-Use Verification Program, as required in provisions 40 CFR 86.1845–01(a)(5)(ii) and 86.1845–04(a)(5)(ii). If data shows noncompliance, EPA will not normally grant subsequent waivers for the applicable evaporative family. The In-Use vehicle recall program also conducts two-diurnal evaporative testing as an additional compliance check.

This provision reduces testing burden by reducing overlapping requirements of the two-diurnal, three-diurnal and ORVR test procedures. In addition, performing all three tests is time consuming, taking a minimum of 12 days to complete if there are no voids. The evaporative test procedures are very complex and detailed, with specified times for completing each section and, when voids occur, they result in additional time to complete the tests.

2. Allow Opportunities for Alternative Methods for the Running Loss Test Procedure

a. Current Procedure. The purpose of the running loss test is to measure evaporative emissions during vehicle operation to assure that vehicles can control fuel vapors generated in use, in urban driving and low-speed or idle conditions. The current regulations require the installation of two temperature sensors (thermocouples) in the fuel tank to provide an average liquid fuel temperature. This average fuel temperature is used to control the fuel tank temperature profile (FTTP) during the running loss drive portion of the three-day test. This current method can be invasive to a vehicle's fuel system and requires thermocouples to be accurately positioned in the fuel tank.

b. Today's Action. Today's action amends the regulations to allow manufacturers the option for using an alternative running loss test procedure. Prior EPA approval is needed for this option. This provision also allows EPA to conduct certification and in-use testing for a specific vehicle using the alternative method for the running loss test procedure.

In order to obtain EPA approval of an alternative method for the running loss test procedure, manufacturers will be required to provide EPA with data that demonstrates that the alternative method is equal to or more stringent than the current method. Data should include, but is not limited to, multiple tests comparing running loss, hot soak, and diurnal emissions using the current test procedure and the alternative test procedure. The test vehicles used to provide comparison are expected to cover the types of technology for the population of vehicles approved to use the alternative method, including, but not limited to, in-tank fuel return and fuel tank parameters, such as tank material, insulation, size, geometry, and location. If a vehicle fails the running loss portion of the three-diurnal test procedure, the manufacturer normally would not be allowed to treat the failure as an invalid test or request a retest using the standard running loss procedure outlined in 40 CFR 86.134–96.

c. Reasons for Action. Today's action allows an alternative method for the running loss test procedure for several reasons.

The allowance of an alternative method addresses specific concerns related to controlling the fuel tank temperature profile (FTTP) during the running loss portion of the three-diurnal test. Thermocouple installment is especially difficult (and often invasive) to perform for in-use running loss and three-day tests on customer-owned vehicles. To perform in-use tests, the fuel tank often needs to be removed and/or a hole is made in the fuel tank, resulting in having to replace the fuel tank on the customer-owned vehicle, which can jeopardize the integrity of the fuel system and the ability of a capable system to demonstrate compliance. If thermocouples are not properly placed in the fuel tank, they can cause the vehicle to fail the running loss test and, consequently, test results are subject to variability.

EPA is not aware of an alternative method at this time, nor any alternative methods of controlling the in-tank fuel temperature. We encourage the automotive industry to work together to develop a technically accurate method of measuring and controlling in-tank fuel temperatures.

3. Revise EPA Sealed Housing for Evaporative Determination Calibration Procedure

a. Current Procedure. The Sealed Housing for Evaporative Determination (SHED) calibration procedure (retention check) is designed to determine that the SHED enclosure does not have leaks that could result in falsely low hydrocarbon readings during the vehicle evaporative testing sequences. The current calibration requirements, outlined in 40 CFR 86.117–96 (c)(1)(vii), which include evaporative SHED retention checks, were designed for vehicles meeting Tier 1 evaporative emission standards. This regulation requires the injection of two to six grams of methanol and/or propane with a five-minute minimum mixing time for enclosure recovery measurements and a 24-hour time period for retention checks. These calibration requirements were not designed for the more stringent Tier 2 evaporative emission standards.

b. Today's Action. Today's action revises the current SHED calibration procedure to an injection of 0.5 to 6 grams for vehicles meeting three-diurnal standards equal to or above 2.0 grams/test. This provision also revises the SHED calibration procedure to specify the injection of 0.5 to 1.0 gram methane and/or propane for a maximum injection of 1.0 grams for vehicles meeting three-diurnal standards below 2.0 grams/test. Both revisions utilize the five-minute minimum mixing time and 96°F.

c. Reason for Action. EPA believes this action will ensure that manufacturer and EPA evaporative SHEDs are properly calibrated in accordance with testing to more stringent evaporative emission standards for Tier 2 vehicles. It will also harmonize the EPA SHED injection amounts with those of California ARB.[1]

4. Harmonize EPA and California Evaporative Test Data

a. Current Procedure. Current provisions allow EPA to accept California evaporative data based on 40 CFR 86.1811–04(e)(6) for Tier 2 vehicles. However, current regulations do not specifically allow EPA to accept California evaporative data for heavy-duty vehicles and non-Tier 2 vehicles even when the combination of the data, the California test procedures, and the California emission standards are as or more stringent than EPA's requirements.

b. Today's Action. Today's action allows the submission of California evaporative data for heavy-duty vehicles and non-Tier 2 vehicles, which may be submitted in lieu of Federal test data for 50 state evaporative/refueling families and for ''carry across'' data from a California evaporative/refueling family to a federal family. EPA requests that manufacturers notify EPA of their intention to use California test data to demonstrate compliance with applicable federal evaporative emission standards and include a statement in their certification application that based on good engineering judgement the vehicles in an evaporative/refueling family will comply with the applicable federal evaporative standards if tested using California test conditions and procedures. EPA may request comparative test data on a case-by-base basis which clearly demonstrates that a vehicle meeting the California evaporative standard will also meet the appropriate federal evaporative emission standard.

5. Provide the Option for Using Alternative Canister Loading Methods for the Federal Test Procedure

a. Current Procedure. The current methods for canister loading for the Federal Test Procedure (FTP) are described in provisions 40 CFR 86.132–96(h), (j)(1), and (j)(2). During the canister loading, the canister remains in place, but in situations where the canister is inaccessible, the canister may be removed for loading with special care not to damage any components or the integrity of the fuel system. The canister is then loaded with a butane-nitrogen mixture.

b. Today's Action. Today's action allows manufacturers the option of using alternative canister loading methods that are equivalent or more stringent than the applicable canister loading method. Prior approval by EPA is required in order to use alternative methods to preload the canister(s) during the exhaust and evaporative test sequences. Manufacturers must provide data to EPA to prove that alternative methods maintain the current stringency required through the canister loading procedure. This information includes, but is not limited to, location of canister vent hose and whether the canister is routed to a dummy canister or vented during testing. EPA may also use the manufacturer-specified, EPA-approved alternative canister loading method to conduct confirmatory testing and in-use testing or the appropriate method outlined in 40 CFR 86.132–96(h), 86.132–96(j)(1), or 86.132–96(j)(2).

c. Reasons for Action. EPA recognizes that the use of the current methods for canister loading during the FTP can jeopardize the integrity of the evaporative emission control system and, therefore, the ability of a capable system to demonstrate compliance with lower evaporative emission standards. In cases where the canister is inaccessible, the current canister loading procedure can be quite burdensome and difficult to perform, especially on In-Use Verification Program vehicles.

6. In-Use Verification Program Evaporative Emissions Testing Requirements

EPA is clarifying EPA's position regarding the evaporative emission testing requirements for the current In-Use Verification Program (IUVP) (40 CFR 86.1845–01, 86.1845–04). The current provisions imply, but do not specify, that all evaporative tests for all fuel types should be performed, including the two-day diurnal-plus-hot-soak, three-day diurnal-plus-hot-soak, and running loss tests.

As discussed in the preamble to the CAP 2000 Notice of Proposed Rulemaking text (63 FR 39672, July 23, 1998), EPA did not anticipate that more than one evaporative test would be required for IUVP vehicles.

The clarifications for IUVP state that for gasoline- and ethanol-fueled in-use vehicles, running loss and three-day diurnal-plus-hot-soak evaporative emissions tests are not required to be performed. However, while these tests do not have to be performed, gasoline- and ethanol-fueled IUVP vehicles are still required to comply with the applicable standards for the three-diurnal and running loss test procedures. The two-diurnal test procedure must continue to be conducted on gasoline- and ethanol-fueled IUVP vehicles. Note that for compressed natural gas (CNG) and propane (LPG) fueled (also known as gaseous-fueled) vehicles, a three-day diurnal-plus-hot-soak test is required for IUVP testing. However, for gaseous-fueled vehicles the three-diurnal test procedure neither includes a running loss test nor thermocouples placed in the fuel tank, and therefore is not intrusive for IUVP testing of these vehicles. In addition, the two-day test procedure is not applicable to gaseous-fueled vehicles, 40 CFR 86.130–96(a)(2).

[1] California Air Resources Board's SHED calibration procedure for propane injections, for the five minute retention and 24 hour recovery, is outlined in the California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles, adopted August 5, 1999. California's propane injection procedure for LEV–II evaporative vehicles and partial zero emissions vehicles (PZEVs) requires 0.5 to 1.0 grams to be injected with a five minute maximum mixing time, cycling the ambient temperature up to 105°F.

7. CFR Correction for Paragraph 86.1810–01 (m)

Paragraph 86.1810–01 (m) was inadvertently omitted from the July, 2002, Code of Federal Regulations (CFR). This paragraph is necessary as it relates to other modifications and clarification in today's action. Paragraph (m) refers to waivers referenced in today's action.

Today's action resubmits paragraph 86.1810–01 (m) to the CFR, as worded in the original CAP 2000 rule (64 FR 23939, May 4, 1999).

B. Onboard Refueling Vapor Recovery (ORVR) and Spitback Test Procedure

1. Option To Not Disconnect Hoses During ORVR

a. Current Procedure. Currently, 40 CFR 86.152–98(b), 40 CFR 86.153–98(d), and 40 CFR 86.153–98(e)(2) require the canister to be disconnected for integrated and non-integrated systems when draining and refueling the fuel tank to the 10 percent level prior to the initial soak, which precedes the actual refueling and measurement portion of the refueling test. The canister is also required to be disconnected when initially filling the fuel tank to 95 percent of nominal tank capacity in the preconditioning portion of the ORVR test for non-integrated systems.

b. Today's Action. Today's action provides manufacturers the option of not disconnecting the evaporative hoses during the ORVR preconditioning step. The manufacturer shall specify whether or not the canister should be disconnected, and EPA will use the manufacturer specified procedure when performing EPA confirmatory testing.

c. Reasons for Action. The option to not disconnect the ORVR hose is a more stringent test procedure than disconnecting the hose because the hose, while in place, will direct all refueling vapors to the canister during the preconditioning portion of the ORVR test, adding an additional load to the canister. The primary reason manufacturers may use this option is to minimize the chance of the test procedure causing vapor leaks in the evaporative system, minimize the chance of damage that may result from disconnecting the hose, and reduce test variability. If the canister hoses are not re-connected properly, the test procedure could result in vapor leaks in the system, leading to variability in the test data.

2. CFR Correction for Paragraph 86.1810–01(1)

Paragraph 86.1810–01(1) was inadvertently omitted from the July 2002 Code of Federal Regulations (CFR).

Today's action resubmits paragraph 86.1810–01 (l) to the CFR, as worded in the Heavy-Duty ORVR Final Rule (65 FR 59970, October 6, 2000).

C. Four-Wheel Drive Dynamometer Provisions

a. Current Procedure

The current dynamometer test procedures only apply to the use of a two-wheel drive dynamometer and do not include provisions for utilizing a four-wheel drive dynamometer.

b. Today's Action

Today's action revises three sections of 40 CFR Subpart B, all of which have identical wording describing how to test four-wheel drive vehicles on a chassis dynamometer. The three sections which EPA will modify, 86.135–90, 86.159–00, and 86.160–00, all date from a time when four-wheel drive dynamometers were not widely available for measurement of exhaust emissions and fuel economy. EPA has not ruled out future changes in its emission and fuel economy compliance programs, especially as EPA strives to ensure that a dynamometer test for a given vehicle is as representative as possible of the vehicle's actual road experience.

EPA plans to issue a guidance letter prepared by the Certification and Compliance Division announcing in further detail how it will use the four-wheel drive dynamometer in its compliance programs. However, guidance letters are written to clarify EPA policy, and it is not possible to issue a guidance letter on usage of the four-wheel drive dynamometer until the language in the CFR is revised. In the absence of that, EPA has developed the following proposals for the use of four-wheel drive dynamometers in emission and fuel economy compliance programs. The term four-wheel drive vehicle is also meant to include all-wheel drive vehicles.

The regulatory changes described below will give EPA and manufacturers the regulatory authority to test four-wheel drive and all-wheel drive vehicles on four-wheel drive dynamometers. These changes do not impose new stringency in EPA's certification and compliance programs.

Manufacturers may conduct certification testing for four-wheel drive vehicles on either a four-wheel drive or two-wheel drive mode of dynamometer operation. EPA will conduct confirmatory testing on certification and fuel economy test vehicles in the same dynamometer mode of operation, two-wheel drive or four-wheel drive, which the manufacturer used for their vehicle testing.

Manufacturers will normally conduct In-Use Verification Program testing on a four-wheel drive dynamometer for vehicles which were certified in a four-wheel drive test mode. Four-wheel drive vehicles which were certified in a two-wheel drive mode may be tested in either a four-wheel drive or a two-wheel drive mode of operation. Prior approval by EPA is required to test four-wheel drive vehicles, which were certified on a four-wheel drive test mode, on a two-wheel drive dynamometer for the In-Use Verification Program.

EPA conducts in-use surveillance testing on randomly procured vehicles that are not screened with the same rigor that would be used for recall confirmatory class vehicles. EPA may conduct surveillance in-use testing of all-wheel drive vehicles on the four-wheel drive dynamometer as necessary to avoid modifications to the owner's vehicle, regardless of how the vehicles were certified.

If an all-wheel drive vehicle class certified in a two-wheel drive configuration must undergo in-use confirmatory testing, EPA will discuss with the manufacturer options to determine the most practical and appropriate way to conduct the testing. EPA will make the final determination as to whether the vehicles will be tested in the all-wheel drive mode for confirmatory testing.

EPA may conduct defeat device testing in the four-wheel drive mode of operation using four-wheel drive certification and fuel economy vehicles that were tested by the manufacturer on a two-wheel drive dynamometer, and confirmatory tested on a two-wheel drive dynamometer at EPA.

c. Reason for Action

Changes in technology for modern four-wheel and all-wheel drive vehicles have heightened the need for testing these vehicles on a four-wheel drive dynamometer. It is no longer easy to configure certain four-wheel or all-wheel drive certification vehicles for testing on a two-wheel drive dynamometer. The need for four-wheel drive dynamometer tests also includes hybrid vehicles with sophisticated regenerative braking systems that cannot receive a representative test on a two-wheel drive dynamometer.

EPA is also aware of a small but increasing number of in-use vehicles which cannot be modified for testing on

a two-wheel drive dynamometer without intrusive modification to the drive line and/or modifications to the vehicle's electronic control systems. Additionally, there are many more four-wheel and all-wheel drive vehicles in the market place today compared to the time when EPA's policy for testing four-wheel drive vehicles was first drafted. Although four-wheel drive dynamometers have been installed at many test facilities worldwide, EPA realizes that individual manufacturers may have limited experience in compliance testing on these dynamometers, in particular for the most sophisticated new all-wheel drive vehicles. EPA understands that users of four-wheel drive dynamometers are, in some cases, still learning how well four-wheel drive dynamometers can simulate actual road operation. EPA and manufacturers will both benefit as more data are collected and examined.

D. Vehicle Labeling

a. Current Procedure

40 CFR 86.1807–01 contains the labeling requirements for vehicles, which include light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles which are chassis certified. 40 CFR 86.098–35 previously applied to vehicle and engine labeling, but since the 2001 model year apply only to heavy-duty engine labeling.

b. Today's Action

Today's action revises the vehicle labeling requirements described in sections 40 CFR 86.1807–01, Vehicle labeling, and 40 CFR 86.098–35, Labeling, for no longer requiring out-dated information to be included on the label.

The Certification and Compliance Division expects to issue a guidance letter after these regulatory changes are completed in order to show an example of an approved label which reflects the new flexibility in label design. Initially, vehicle manufacturers who wish to take advantage of these labeling changes must have their new label designs approved by their EPA vehicle or engine certification representative.

c. Reason for Action

These changes to the regulations allow more flexibility in label content and design, specifically for the objective of improving the labels' clarity and usefulness. This action is desired since the labels' basic content requirements have not been updated since the introduction of catalyst technology almost 30 years ago. Several of the requirements in the labeling sections are no longer necessary or useful for modern vehicles with electronic emission controls. Since modern vehicles and engines are electronically controlled, a listing of tune-up specifications is no longer necessary. Additionally, the requirement for a hose routing diagram dates from pre-electronic controlled vehicles and serves no purpose for modern vehicles and engines. In the unlikely event that vacuum actuated controls are present on modern vehicles, their function and location and routing of hoses are fully described in the vehicle service manual.

By making these changes to the regulations, it is also EPA's expectation that the label designs may be slightly more generic, leading to a reduced number of label types which are required at the time the vehicle or engine is produced, leading to fewer labeling errors. Additionally, by requiring only the necessary information on the label for modern vehicles and engines, it is expected that the size of the label, or the number of them for manufacturers which currently use more than one label to meet the present labeling requirements, may be reduced.

When Tier 2 regulations were implemented, a new vehicle class, medium-duty passenger vehicles, was added. Thus it is necessary to update the regulations so as to clarify that the regulations apply to light-duty vehicle, light-duty trucks, and medium-duty passenger vehicles and heavy duty vehicles.

Accepting alternative labels will permit use of revised formats for heavy-duty engines which are easier to read, while still displaying the important elements of the ''Important Engine Information'' label. In addition, updating the regulations explicitly adds the heavy-duty class of vehicles that are certified to the chassis standards to this part of the labeling requirement section, making it consistent with the requirements for light-duty vehicles and light-duty trucks in 86.1807–01(c)(1).

EPA has no need for the SAE J1892 bar code to be printed on the Vehicle Emission Control Information (VECI) label. By removing this requirement, EPA will also be harmonizing the label information to be consistent with those of California Air Resources Board. In a letter dated June 26, 2002, the California Air Resources Board issued Mail-Out #MSO 2002–06 waived the requirement to print the SAE bar code on the labels for 2003 model year and newer vehicles and engines.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a ''significant regulatory action.''

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Today's action may reduce testing and reporting burden by allowing the option for waivers and/or alternative test procedures. The current average annual reporting burden is listed as 542,118 hours and $10,889,000 for 153 respondents by the Office of Management and Budget for light-duty and heavy-duty vehicles. If a manufacturer does not implement any of today's actions, the reporting burden will not change. Otherwise, the burden may be reduced by implementing today's actions but will vary depending upon the options and/or alternative methods chosen. For instance, utilizing the option to waive the two-diurnal diurnal-plus-hot-soak will reduce testing burden by approximately 48 hours and $5,000 per vehicle. Since no alternative procedures for the running loss test or canister loading have been

approved at this time, the burden reduction cannot be quantified, but they will, in the future, result in decreases in hours and costs. The other options described in today's action cannot be quantified but would not result in any additional burden.

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 Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

Today's rule revises certain provisions of the Evaporative Emissions Compliance Procedure (58 FR 16002, March 24, 1993) and the Onboard Refueling Vapor Recovery Procedure (58 FR 16262, April 6, 1994), such that regulated entities will find it less burdensome to demonstrate compliance with the requirements of the evaporative emissions and ORVR test requirements. More specifically, today's action makes minor revisions to clarify regulations and reduces burdens for manufacturers without reducing stringency. In addition, today's rule revises the dynamometer test provisions (40 CFR 86.135–90, 40 CFR 86.159–00, 40 CFR 86.160–00) and the Vehicle Labeling requirements (40 CFR 86.098–35, 40 CFR 86.1807–01), such that regulated entities will find it less burdensome to test four-wheel drive vehicles and vehicle labels will reflect current information rather than out-dated information. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that today's action does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Evaporative Emissions rule, Dynamometer regulations, and Labeling regulations. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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, we 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 we consult with state and local officials early in the process of developing the proposed regulation. We 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.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

Today's action 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. Today's action revises certain provisions of earlier rules that adopted national standards to control vehicle evaporative emissions, dynamometer test provisions, and labeling requirements. The requirements of the rule will be enforced by the Federal Government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to today's action.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's action does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's action will have national applicability. Furthermore, today's action does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to today's action.

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

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

Today's action is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, today's action does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. Today's action references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's action involve the measurement of vehicle evaporative emissions, the allowance for four-wheel dynamometer test capabilities in certification and in-use testing, and labeling requirements revisions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing today's action 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). Today's action will be effective February 6, 2006.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 202 and 206 of the Act, 42 U.S.C. 7521. Today's action is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 29, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 86.005–10 is amended by adding paragraph (a)(5) to read as follows:

§ 86.005–10 Emission Standards for 2005 and later model year Otto-cycle heavy-duty engines and vehicles.

* * * * *

(a) * * *

(5) For certification purposes, where the applicable California evaporative emission standard is as stringent or more stringent than the applicable federal evaporative emission standard, the Administrator may accept California certification test data indicating compliance with the California standard to demonstrate compliance with the appropriate federal certification evaporative emission standard. The Administrator may require the manufacturer to provide comparative test data which clearly demonstrates that a vehicle meeting the California evaporative standard (when tested under California test conditions/test procedures) will also meet the appropriate federal evaporative emission standard when tested under federal test conditions/test procedures described in this Part 86.

* * * * *

■ 3. Section 86.098–35 is amended by adding paragraph (j) to read as follows:

§ 86.098–35 Labeling.

* * * * *

(j) The Administrator may approve in advance other label content and formats provided the alternative label contains information consistent with this section.

Subpart B—[Amended]

■ 4. Section 86.117–96 is amended by revising paragraph (c)(1)(vii) to read as follows:

§ 86.117–96 Evaporative emission enclosure calibrations.

* * * * *

(c) * * *

(1) * * *

(vii) For evaporative emission enclosures which will be used to measure evaporative emissions from vehicles meeting evaporative standards equal to or above 2.0 grams, inject into the enclosure 0.5 to 6 grams of pure methanol at a temperature of at least 150°F (65°C) and/or 0.5 to 6 grams of pure propane at lab ambient temperatures. For evaporative emission enclosures which will be used to measure evaporative emissions from vehicles meeting evaporative standards below 2.0 grams, inject into the enclosure 0.5 to 1.0 grams of pure methanol at a temperature of at least 150°F (65°C) and/or 0.5 to 1.0 grams of pure propane at lab ambient temperature. The injected quantity may be measured by volume flow or by mass measurement. The method used to measure the quantity of methanol and propane shall have an accuracy of ±0.2 percent of measured value (less accurate methods may be used with the advance approval of the Administrator).

* * * * *

■ 5. Section 86.132–96 is amended by adding paragraph (n) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(n) With prior approval of the Administrator, manufacturers may use an alternative canister loading method in lieu of the applicable canister loading method described in the provisions of paragraphs (h), (j)(1) and (j)(2) of this section, provided the alternative method is shown to be equivalent or result in a more fully loaded canister (a canister that has adsorbed an equal or greater amount of hydrocarbon vapors) than the applicable canister loading method required by the provisions of paragraphs (h), (j)(1) and (j)(2) of this section. Additionally, the Administrator may conduct confirmatory certification testing and in-use testing using the alternative canister loading method used by the manufacturer to test applicable certification and/or in-use vehicles or the appropriate method outlined in the provisions of paragraphs (h), (j)(1) and (j)(2) of this section.

■ 6. Section 86.134–96 is amended by adding paragraph (g)(3) to read as follows:

§ 86.134–96 Running loss test.

* * * * *

(g) * * *

(3) With prior approval of the Administrator, manufacturers may use an alternative running loss test procedure, provided the alternative test procedure is shown to yield equivalent or superior emission results (in terms of quality control, accuracy and repeatability) for the running loss, hot soak and diurnal portions of the three diurnal-plus-hot-soak test sequence. Additionally, the Administrator may conduct certification and in-use testing using the test procedures outlined in paragraph (g)(1) of this section, paragraph (g)(2) of this section or the alternative running loss test procedure as approved for a specific vehicle.

* * * * *

■ 7. Section 86.135–90 is amended by revising paragraph (i) to read as follows:

§ 86.135–90 Dynamometer procedure.

* * * * *

(i) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

■ 8. Section 86.152–98 is amended by revising paragraph (b) to read as follows:

§ 86.152–98 Vehicle preparation; refueling test.

* * * * *

(b) Optionally, provide valving or other means to allow the venting of the refueling vapor line to the atmosphere rather than to the refueling emissions canister(s) when allowed by this test procedure.

* * * * *

■ 9. Section 86.153–98 is amended by revising paragraphs (d) introductory text and (e)(2) to read as follows:

§ 86.153–98 Vehicle and canister preconditioning; refueling test.

* * * * *

(d) *Canister purging: non-integrated systems.* Within one hour of completion of canister loading to breakthrough, the fuel tank(s) shall be further filled to 95 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the fuel specified in § 86.113–94. During this fueling operation, the refueling emissions canister(s) shall be disconnected, unless the manufacturer specifies that the canister(s) should not be disconnected. Following completion of refueling, the refueling emissions canister(s) shall be reconnected, if the canister was disconnected during refueling. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. Vehicle driving to purge the refueling canister(s) shall be performed using either the chassis dynamometer procedure or the test track procedure, as described in paragraphs (d)(1) and (d)(2) of this section. The Administrator may choose to shorten the vehicle driving for a partial refueling test as described in paragraph (d)(3) of this section. For vehicles equipped with dual fuel tanks, the required volume of fuel shall be driven out of one tank, the second tank shall be selected as the fuel source, and the required volume of fuel shall be driven out of the second tank.

* * * * *

(e) * * *

(2) *For all other refueling emission tests.* Within 10 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the refueling emissions canister(s) shall be disconnected, unless the manufacturer specifies that the refueling canister(s) should not be disconnected. Within 60 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the vehicle fuel tank(s) shall be drained, the fuel tank(s) fueled to 10 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel, and the vehicle parked (without starting the engine) and soaked at 80±3°F (27±1.7°C) for a minimum of 6 hours and a maximum of 24 hours.

■ 10. Section 86.159–00 is amended by revising paragraph (b)(8) to read as follows:

§ 86.159–00 Exhaust emission test procedures for US06 emissions.

* * * * *

(b) * * *

(8) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

* * * * *

■ 11. Section 86.160–00 is amended by revising paragraph (b)(8) to read as follows:

§ 86.160–00 Exhaust emission test procedure for SC03 emissions.

* * * * *

(b) * * *

(8) Four-wheel drive and all-wheel drive vehicles may be tested either in a four-wheel drive or a two-wheel drive mode of operation. In order to test in the two-wheel drive mode, four-wheel drive and all-wheel drive vehicles may have one set of drive wheels disengaged; four-wheel and all-wheel drive vehicles which can be shifted to a two-wheel mode by the driver may be tested in a two-wheel drive mode of operation.

* * * * *

Subpart M—[Amended]

■ 12. Section 86.1232–96 is amended by adding paragraph (n) to read as follows:

§ 86.1232–96 Vehicle preconditioning.

* * * * *

(n) With prior approval of the Administrator, manufacturers may use an alternative canister loading method in lieu of the applicable canister loading method described in the provisions of § 86.1232–96(h), § 86.1232–96 (j)(1) and § 86.1232–96 (j)(2), provided the alternative method is shown to be equivalent or result in a more fully loaded canister (a canister that has adsorbed an equal or greater amount of hydrocarbon vapors) than the applicable canister loading method required by the provisions of paragraphs (h), (j)(1), and (j)(2) of this section. Additionally, the Administrator may conduct confirmatory certification testing and in-use testing using the alternative canister loading method used by the manufacturer to test applicable certification and/or in-use vehicles or one of the methods outlined in the provisions of paragraphs (h), (j)(1), and (j)(2) of this section.

■ 13. Section 86.1234–96 is amended by adding paragraph (g)(3) to read as follows:

§ 86.1234–96 Running loss test.

* * * * *

(g) * * *

(3) With prior approval of the Administrator, manufacturers may use an alternative running loss test procedure, provided the alternative test procedure is shown to yield equivalent or superior emission results (in terms of quality control, accuracy and repeatability) for the running loss, hot soak and diurnal portions of the three diurnal-plus-hot-soak test sequence. Additionally, the Administrator may conduct certification and in-use testing using the test procedures outlined in paragraph (g)(1) of this section, paragraph (g)(2) of this section or the alternative running loss test procedure as approved for a specific vehicle.

* * * * *

Subpart S—[Amended]

■ 14. Section 86.1807–01 is amended as follows:

■ a. by removing and reserving paragraphs (a)(3)(iv).

■ b. by revising (a)(3)(v).

■ c. by removing and reserving (a)(3)(vii).

■ d. by revising paragraph (c)(1) introductory text.

■ e. by adding paragraphs (c)(1)(ii)(C) and (D).

■ f. by removing and reserving paragraphs (c)(1)(iii), (c)(2), and (c)(3).

■ g. by revising paragraphs (f) and (g).

§ 86.1807–01 Vehicle labeling.

* * * * *

(a) * * *

(3) * * *

(iv) [Reserved]

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, or complete heavy-duty vehicles;

* * * * *

(vii) [Reserved]

* * * * *

(c)(1) The manufacturer of any light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or heavy-duty vehicle subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4 set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numbers not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

* * * * *

(ii) * * *

(C) For medium-duty passenger vehicles, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-fueled 20XX Model Year New Medium-Duty Passenger Vehicles.''

(D) For heavy-duty vehicles, the statement: ''This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-fueled 20XX Model Year Chassis-Certified New Heavy-Duty Vehicles.''

(iii) [Reserved]

(2) [Reserved]

(3) [Reserved]

(f) All light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 ''Recommended Practice for Bar-Coded Vehicle Identification Number Label,'' (July 1994). SAE J1877 is incorporated by reference (see § 86.1).

(g) The Administrator may approve in advance other label content and formats provided the alternative label contains information consistent with this section.

■ 15. Section 86.1810–01 is amended as follows:

■ a. by adding paragraph (j)(4);

■ b. by revising paragraph (l)(1) introductory text;

■ c. by removing paragraphs (l)(2)(i), (l)(2)(ii), the second paragraph designated as (l)(2), and (l)(3); and

■ d. by adding paragraph (m).

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * * *

(j) * * *

(4) For certification purposes, where the applicable California evaporative emission standard is as stringent or more stringent than the applicable federal evaporative emission standard, the Administrator may accept California certification test data indicating compliance with the California standard to demonstrate compliance with the appropriate federal certification evaporative emission standard. The Administrator may require the manufacturer to provide comparative test data which clearly demonstrates that a vehicle meeting the California evaporative standard (when tested under California test conditions/test procedures) will also meet the appropriate federal evaporative emission standard when tested under federal test conditions/test procedures described in this Part 86.

* * * * *

(l) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in § 86.1811–04(e), § 86.1812–01(e), § 86.1813–01(e), § 86.1816–05(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) * * *

(ii) * * *

(2) * * *

(m) Inherently low refueling emission testing waiver. (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in § 86.1811–04(e), § 86.1812–01(e), § 86.1813–01(e) and § 86.1816–05(e) provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg. F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: ''Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system.''

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

* * * * *

■ 16. Section 86.1829–01 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

(b) * * *

(2) * * *

(iii) Optional waiver of two-diurnal evaporative certification test for gasoline- and ethanol-fueled vehicles. In lieu of testing gasoline-fueled and ethanol-fueled vehicles for the supplemental two-diurnal test sequence according to the provisions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section, a manufacturer may optionally provide a statement of compliance in its application for certification that, based on the manufacturer's good engineering judgement, all light-duty vehicles, light-duty trucks and complete heavy-duty vehicles in the applicable evaporative/refueling emission family comply with the evaporative emission standard for the supplemental two-diurnal test sequence.

(A) The option to provide a statement of compliance in lieu of 2-diurnal evaporative certification test data outlined in paragraph (b)(2)(iii) of this section is limited to vehicles with conventional evaporative emission control systems (as determined by the Administrator). This option may be used for vehicles in evaporative/refueling families which are certified to the applicable two-diurnal, three-diurnal, running loss, and refueling emission standards. EPA may perform confirmatory 2-diurnal evaporative emission testing on certification test vehicles which are certified using this option (even though the manufacturer may not have performed a 2-diurnal evaporative test during the certification process). If data shows noncompliance, noncompliance will be addressed through 86.1851. As well, if data shows noncompliance, EPA may not normally allow for subsequent waivers for the applicable evaporative family.

(B) Manufacturers shall supply information if requested by EPA in support of the statement of compliance outlined in paragraph (b)(2)(iii) of this section. This information shall include evaporative calibration information for the emission-data test vehicle and for other vehicles in the evaporative/refueling family, including, but not limited to, canister type, canister volume, canister working capacity, fuel tank volume, fuel tank geometry, the type of fuel delivery system (return, returnless, variable flow fuel pump, etc.), a description of the input parameters and software strategy used to control the evaporative canister purge, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 2-diurnal (FTP) driving cycle, the nominal purge flow volume (in bed volumes) when vehicles are driven over the 3-diurnal (FTP + running loss) driving cycle, and other supporting information as necessary to demonstrate that the purge flow rate calibration on the 2-diurnal test sequence is adequate to comply with the evaporative emission standard for the supplemental two-diurnal test sequence.

* * * * *

■ 17. Section 86.1845–01 is amended by revising paragraph (c)(5)(ii) to read as follows:

§ 86.1845–01 Manufacturer in-use verification testing requirements.

* * * * *

(c) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (c)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section for testing under paragraph (c)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (c)(5)(i) of this section.

* * * * *

■ 18. Section 86.1845–04 is amended by revising paragraph (b)(5)(ii) and (c)(5)(ii) to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

* * * * *

(b) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission and refueling emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

* * * * *

(c) * * *

(5) * * *

(ii) For non-gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the supplemental 2-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. For gaseous fueled vehicles, one test vehicle of each evaporative/refueling family shall be tested in accordance with the 3-diurnal-plus-hot-soak evaporative emission procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

* * * * *

[FR Doc. 05–23714 Filed 12–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 100 to 185, revised as of October 1, 2004, on page 591, § 173.315 is corrected by adding paragraph (i)(8) to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

* * * * *

(i) * * *

(8) Each pressure relief valve outlet must be provided with a protective device to prevent the entrance and accumulation of dirt and water. This device must not impede flow through the valve. Pressure relief devices must be designed to prevent the entry of foreign matter, the leakage of liquid and the development of any dangerous excess pressure.

[FR Doc. 05–55517 Filed 12–7–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1540

RIN 1652–ZA09

Prohibited Items; Allowing Small Scissors and Small Tools

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Interpretive rule.

SUMMARY: To enable transportation security officers to concentrate on more effectively confronting the threat of concealed explosives being taken into the cabin of an aircraft, the Transportation Security Administration (TSA) is removing certain low threat, high volume, and easily identified items from the prohibited items list. This document amends the TSA interpretive rule that provides guidance to the public on the types of items that TSA considers to be weapons, explosives, and incendiaries, and which are therefore prohibited in airport sterile areas, in the cabins of aircraft, or in passengers' checked baggage. This document removes small scissors and certain small tools from the prohibited items list and adds them to the permitted items list.

DATES: Effective December 22, 2005.

FOR FURTHER INFORMATION CONTACT: John Randol, Security Operations, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1796.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy using the Internet by—

(1) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(2) Visiting TSA's Law and Policy Web page at *http://www.tsa.gov* and accessing the link for ''Law and Policy'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Statutory and Regulatory Background

TSA is responsible for security in all modes of transportation, including aviation. See 49 U.S.C. 114(d). TSA restricts what passengers may carry into the sterile areas of airports and into the cabins of air carrier aircraft. Under TSA's regulation for acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual) may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

- When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;
- When the individual is entering or in a sterile area; or
- When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter.

On February 14, 2003, TSA published an interpretive rule that provided guidance to the public on the types of

property TSA considers to be weapons, explosives, and incendiaries prohibited on an individual's person or accessible property, items permitted on an individual's person or accessible property, and items prohibited in checked baggage (68 FR 7444). TSA has amended the interpretive rule several times.[1]

TSA now is modifying the interpretive rule to allow passengers to carry metal scissors with pointed tips and a cutting edge four inches or less, as measured from the fulcrum, through a passenger screening checkpoint and into the cabin of an aircraft. Metal scissors with pointed tips and a blade length greater than four inches will continue to be prohibited. TSA is also providing an exception for screwdrivers, wrenches, pliers, and other tools seven inches or less in length. However, all tools greater than seven inches in length, as well as all crowbars, drills, hammers and saws, will continue to be prohibited.

In the four years since the terrorist attacks of September 11, 2001, a broad range of interconnected security measures have been established that, in combination, now provide more effective security against threats directed at seizing control of aircraft. These interconnected security measures include the introduction of hardened cockpit doors on commercial aircraft, the increased presence of Federal Air Marshals (FAM) onboard commercial flights, as well as a growing number of Federal Flight Deck Officers (FFDO).

With these security measures presently in place, a disproportionate amount of TSA's limited screening resources are directed each day at objects that no longer pose a significant threat. Amending the prohibited items list to allow certain low threat, high volume, and easily identified items, such as small scissors and tools, through the checkpoint will free up time and resources to allow TSA to implement screening procedures that are better targeted for identifying explosives concealed on individuals and in their accessible property, which pose a higher threat to the security of air transportation and air commerce. TSA is making this modification to the interpretive rule in order to more effectively confront the threat of concealed explosives being successfully taken through a passenger screening checkpoint and into the cabin of an aircraft.

[1] 68 FR 9902 (technical corrections, March 3, 2003); 70 FR 9877 (prohibiting lighters, March 1, 2005); 70 FR 51679 (permiting certain small scissors that persons with ostomies need, August 31, 2005).

Small Scissors Are Now Permitted

Under the interpretive rule, TSA has considered all metal scissors with pointed tips to be weapons, except ostomy scissors. Therefore, individuals were prohibited from carrying these types of scissors in an airport sterile area or in the cabin of an aircraft. Metal scissors with blunt tips, plastic scissors, and ostomy scissors remain permitted. The interpretive rule as modified in this document allows metal scissors with pointed tips and a cutting edge four inches or less, as measured from the fulcrum, through the passenger screening checkpoint and into the cabin of an aircraft.

While it is possible for an individual or group of individuals to use small scissors as a weapon inside a commercial aircraft, the risk that scissors could be used to seize control of an aircraft is mitigated by the presence of hardened cockpit doors and FAMs, as well as a growing number of FFDOs. Current data shows that, excluding knives and box cutters, sharp objects make up 19 percent of the total number of prohibited items found at the passenger screening checkpoint. During the third and fourth quarters of fiscal year 2005, 1,762,571 sharp objects other than knives and box cutters were found at screening checkpoints. Based on information provided by transportation security officers and other screening experts in the field TSA has determined that scissors make up a large majority of the total number of the sharp objects found at passenger screening checkpoints. Moreover, most of these scissors are small with blades less than four inches in length as measured from the fulcrum.

Under current policy, for each pair of scissors discovered by an x-ray operator, a transportation security officer must perform a physical bag search to locate and remove them. Based on the high number of scissors found at passenger screening checkpoints nationwide, transportation security officers spend a very large amount of their time, attention, and resources focused on finding small scissors. Removing scissors with blades four inches or less in length from the prohibited items list will allow TSA to reallocate screening resources to more effectively search for items at the checkpoint that present a much greater threat, such as explosives.

We believe transportation security officers will be able to easily and immediately adjust to this proposed change in the prohibited items list. Moreover, transportation security officers will continue to improve their performance in identifying scissors on the x-ray and avoid having to resort to labor intensive physical bag searches. This labor and resource savings will allow TSA to employ other security measures to confront the explosives threat more effectively.

Certain Small Tools Are Now Permitted

Under the prohibited items list, TSA has effectively considered all tools to be weapons and prohibited passengers from carrying them into an airport sterile area and in the cabin of an aircraft. TSA specifically prohibited crowbars, drills,[2] hammers, saws,[3] screwdrivers (except those in eyeglass repair kits), and also had a catchall provision that prohibits all tools including, but not limited to, wrenches and pliers.

We believe the threat of an individual or individuals seizing control of an aircraft using small tools is mitigated by the presence of hardened cockpit doors, FAMs, and FFDOs. This threat does not justify the enormous time and resource investment dedicated towards screening for these items. Transportation security officers found 468,033 tools in the third and fourth quarters of fiscal year 2005. Thus, small tools represent a category of prohibited items that require transportation security officers to spend an amount of time and resources that is disproportionate to the threat presented by allowing them into an airport sterile area and in the cabin of an aircraft.

Based on information provided by TSA screening experts in the field on actual prohibited items found, we believe that small screwdrivers, wrenches, and pliers make up a large majority of the total number of tools found. Based on this same information, we do not believe screeners are finding large numbers of crowbars, drills, hammers, and saws. Thus, there would be minimal transportation security officer time, attention, and resource gains associated with allowing these low volume tools through a passenger screening checkpoint and into the cabin of an aircraft.

Drawing on its screening and security expertise, TSA has determined seven inches to be a practical and logical standard for allowing screwdrivers, wrenches, pliers, and certain other small tools through the passenger screening checkpoint. Not only will the seven inch standard capture a very large percentage of the total number of tools found, it will be easy for transportation security officers to make determinations regarding tools that no longer pose a significant threat and avoid having to

[2] Including cordless portable power drills.

[3] Including cordless portable power saws.

spend the time and resources associated with physically searching passengers' bags for all tools. This resource savings will allow TSA to implement more effective and robust screening procedures that can be targeted at screening for explosives.

TSA is modifying the interpretive rule to remove from the prohibited items list screwdrivers, wrenches, pliers, and other tools seven inches or less in length. All tools greater than seven inches in length, as well as all crowbars, drills, hammers, saws, will continue to be prohibited.

Other Technical Changes

TSA also is making a technical change to the interpretive rule. In prior versions of the interpretive rule, the various tools were divided between the Sharp Objects and the Club-Like Items categories. In order to simplify the organization of the prohibited items list, we are creating a new category for Tools (now section I.G) that TSA considers to be weapons.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to 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 (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Executive Order 12866 Assessment

This rule explains to the public, airport personnel, screeners, and airlines how TSA interprets certain terms used in an existing rule, 49 CFR 1540.111. This interpretative rule is not considered an economically significant regulatory action for purposes of Executive Order 12866. However, there has been significant public interest in aviation security issues since the terrorist attacks of September 11, 2001. Therefore, this rule is significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this interpretive rule and TSA is not preparing an analysis for the Act, since under 5 U.S.C. 553, TSA is not required to publish a notice of proposed rulemaking. Nonetheless, because this rule will not impose any costs on the public, we have determined and certify that this rule does 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. TSA has assessed the potential effect of this interpretative rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 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 a $100 million or more expenditure (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.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this interpretive rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action 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, and therefore will not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

Amendments to Interpretation

TSA is making the following changes to the prohibited items list:

1. Section I.G(1) through (5) is established.
2. Section I.B(3) (now section I.G(2)) is amended to read ''Reserved.''
3. Section I.B(9) (now section I.G(4)) is amended to read ''Reserved.''
4. Section I.B(10) is amended to read ''Scissors, metal with pointed tips and a blade length greater than four inches as measured from the fulcrum.''
5. Section I.B(11) (now section I.G(6)) is amended to read ''Reserved.''
6. Section I.C(6) (now section I.G(1)) is amended to read ''Reserved.''
7. Section I.C(8) (now section I.G(3)) is amended to read ''Reserved.''
8. Section I.C(15) (now sections I.G(5, 7–8)) is amended to read ''Reserved.''
9. Section II.A(17) is amended to read ''Scissors, plastic or metal with blunt tips, and metal with pointed tips and a blade four inches or less in length as measured from the fulcrum.''
10. Section II.C(1) is established.
11. Section III.E is deleted.

Text of Interpretive Rule

The following is the list of prohibited items and permitted items reprinted in its entirety, with the changes inserted.

Prohibited Items and Permitted Items Interpretation

I. *Prohibited Items.* For purposes of 49 U.S.C. 40101 et seq. and 49 CFR 1540.111, TSA interprets the terms ''weapons, explosives, and incendiaries'' to include the items listed below. Accordingly, passengers may not carry these items as accessible property or on their person through passenger screening checkpoints or into airport sterile areas and the cabins of a passenger aircraft.

A. Guns and Firearms

(1) BB guns.
(2) Compressed air guns.
(3) Firearms.
(4) Flare pistols.
(5) Gun lighters.
(6) Parts of guns and firearms.
(7) Pellet guns.
(8) Realistic replicas of firearms.
(9) Spear guns.
(10) Starter pistols.
(11) Stun guns/cattle prods/shocking devices.

B. Sharp Objects

(1) Axes and hatchets.
(2) Bows and arrows.
(3) Reserved.
(4) Ice axes/Ice picks.
(5) Knives of any length, except rounded-blade butter and plastic cutlery.
(6) Meat cleavers.
(7) Razor-type blades, such as box cutters, utility knives, and razor blades not in a cartridge, but excluding safety razors.
(8) Sabers.
(9) Reserved.
(10) Scissors, metal with pointed tips and a blade length greater than four inches as measured from the fulcrum.
(11) Reserved.
(12) Swords.
(13) Throwing stars (martial arts).

C. Club-Like Items

(1) Baseball bats.
(2) Billy clubs.
(3) Blackjacks.
(4) Brass knuckles.
(5) Cricket bats.
(6) Reserved.
(7) Golf clubs.
(8) Reserved.
(9) Hockey sticks.
(10) Lacrosse sticks.
(11) Martial arts weapons, including nunchucks, and kubatons.
(12) Night sticks.
(13) Pool cues.
(14) Ski poles.
(15) Reserved.

D. All Explosives, Including

(1) Ammunition.
(2) Blasting caps.
(3) Dynamite.
(4) Fireworks.
(5) Flares in any form.
(6) Gunpowder.
(7) Hand grenades.
(8) Plastic explosives.
(9) Realistic replicas of explosives.

E. Incendiaries

(1) Aerosol, any, except for personal care or toiletries in limited quantities.
(2) Fuels, including cooking fuels and any flammable liquid fuel.
(3) Gasoline.
(4) Gas torches, including micro-torches and torch lighters.
(5) Lighter fluid.
(6) Strike-anywhere matches.
(7) Turpentine and paint thinner.
(8) Realistic replicas of incendiaries.
(9) All lighters.

F. Disabling Chemicals and Other Dangerous Items

(1) Chlorine for pools and spas.
(2) Compressed gas cylinders (including fire extinguishers).
(3) Liquid bleach.
(4) Mace.
(5) Pepper spray.
(6) Spillable batteries, except those in wheelchairs.
(7) Spray paint.
(8) Tear gas.

G. Tools

(1) Crowbars.
(2) Drills and drill bits, including cordless portable power drills.
(3) Hammers.
(4) Saws and saw blades, including cordless portable power saws.
(5) Other tools greater than seven inches in length, including pliers, screwdrivers, and wrenches.

II. *Permitted Items.* For purposes of 49 U.S.C. 40101 et seq. and 49 CFR 1540.111, TSA does not consider the items on the following lists as weapons, explosives, and incendiaries because of medical necessity or because they appear to pose little risk if, as is required, they have passed through screening. Therefore, passengers may carry these items as accessible property or on their person through passenger screening checkpoints and into airport sterile areas and the cabins of passenger aircraft.

A. Medical and Personal Items

(1) Braille note taker, slate and stylus, and augmentation devices.
(2) Cigar cutters.
(3) Corkscrews.
(4) Cuticle cutters.
(5) Diabetes-related supplies/equipment (once inspected to ensure prohibited items are not concealed), including: insulin and insulin loaded dispensing products; vials or box of individual vials; jet injectors; pens; infusers; and preloaded syringes; and an unlimited number of unused syringes, when accompanied by insulin; lancets; blood glucose meters; blood glucose meter test strips; insulin pumps; and insulin pump supplies. Insulin in any form or dispenser must be properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(6) Eyeglass repair tools, including screwdrivers.
(7) Eyelash curlers.
(8) Knives, round-bladed butter or plastic.
(9) Reserved.
(10) Matches (maximum of four books, strike on cover, book type).
(11) Nail clippers.
(12) Nail files.
(13) Nitroglycerine pills or spray for medical use, if properly marked with a professionally printed label identifying the medication or manufacturer's name or pharmaceutical label.
(14) Personal care or toiletries with aerosols, in limited quantities.
(15) Prosthetic device tools and appliances (including drill, Allen wrenches, pullsleeves) used to put on or remove prosthetic devices, if carried by the individual with the prosthetic device or his or her companion.
(16) Safety razors (including disposable razors).
(17) Scissors, plastic or metal with blunt tips, and metal with pointed tips and a blade four inches or less in length as measured from the fulcrum.
(18) Tweezers.
(19) Umbrellas (once inspected to ensure prohibited items are not concealed).
(20) Walking canes (once inspected to ensure prohibited items are not concealed).

B. Toys, Hobby Items, and Other Items Posing Little Risk

(1) Knitting and crochet needles.
(2) Toy Transformer® robots and the like.
(3) Toy weapons (if not realistic replicas).

C. Tools

(1) Pliers, screwdrivers, wrenches, and other tools seven inches or less in length, excluding crowbars, drills, hammers, and saws.

III. *Items Prohibited in Sterile and Cabin Areas, but May Be Placed in Checked Baggage.* Passengers may place prohibited items other than explosives, incendiaries, disabling chemicals, and other dangerous items (other than individual self-defense sprays as noted below), and loaded firearms in their checked baggage, subject to any limitations provided in DOT's hazardous materials regulation. 49 CFR part 175.

A. *Pepper spray or mace.* A passenger may place one container of self-defense spray in checked baggage, not exceeding 4 fluid ounces by volume, but only if it incorporates a positive means to prevent accidental discharge. See 49 CFR 175.10(a)(4)(ii).

B. *Small arms ammunition.* A passenger may place small arms ammunition for personal use in checked baggage, but only if securely packed in fiber, wood or metal boxes, or other packaging specifically designed to carry small amounts of ammunition. 49 CFR 175.10(a)(5).

C. *Unloaded firearms.* A passenger may place an unloaded firearm or starter pistol in checked baggage if the passenger declares to the airline operator, either orally or in writing, before checking the baggage, that (1) the passenger has a firearm in his or her bag and that it is unloaded, (2) the firearm is carried in a hard-sided container, and (3) the container is locked, and only the passenger has the key or combination. 49 CFR 1540.111(c).

D. *Club-like Items.* A passenger may transport club-like objects and sharp objects in checked baggage, as long as they do not contain explosives or incendiaries.

IV. *Lists are not Exclusive.* Neither the prohibited items list nor the permitted items list contains all possible items. A screener has discretion to prohibit an individual from carrying an item into a sterile area or onboard an aircraft if the screener determines that the item is a weapon, explosive, or incendiary, regardless of whether the item is on the prohibited items list or the permitted items list. For example, if a cigar cutter or other article on the permitted list appears unusually dangerous, the screener may refuse to allow it in sterile areas. Similarly, screeners may allow individuals to bring items into the sterile area that are not on the permitted items list. In addition, items may be prohibited from the cabin of an aircraft, or allowed in only limited quantities, by Department of Transportation regulations governing hazardous materials. Individuals with questions about the carriage of hazardous materials on passenger aircraft may call the Hazardous Materials Information Center at 1–800–467–4922 for more information.

Issued in Arlington, Virginia, on December 5, 2005.

Kip Hawley,

Assistant Secretary.

[FR Doc. 05–23817 Filed 12–5–05; 4:16 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041110317–4364–02; I.D. 112905B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring commercial summer flounder quota to the Commonwealth of Virginia from its 2005 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective December 5, 2005 through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Ruccio, Fishery Management Specialist, (978) 281–9104, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan which was published on December 17, 1993 (58 FR 65936) provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 4,975 lb (2,257 kg) of its 2005 commercial quota to Virginia to cover a landing of a North Carolina vessel disabled at sea and subsequently granted safe harbor in Virginia. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised summer flounder quotas for calendar year 2005, inclusive of all previous adjustments and transfers published on October 18, 2005 (70 FR 60449), are: North Carolina, 4,604,347 lb (2,088,532 kg), and Virginia, 4,018,881 lb (1,822,964 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 2, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–23802 Filed 12–5–05; 2:09 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050517132–5132–01; I.D. 051105D]

RIN 0648–AT36

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Haddock Incidental Catch Allowance for the Atlantic Herring Fishery

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

ACTION: Temporary rule; emergency action; response to public comments; extension of effective period.

SUMMARY: NMFS is promulgating this temporary rule to continue the effectiveness of emergency regulations that established an incidental haddock catch allowance for the Atlantic herring fishery. Emergency action was initially

requested by the New England Fishery Management Council (Council). Measures that were implemented June 12, 2005, are extended through this action for an additional 180 days. In developing these measures, NMFS considered recommendations made by the Council's Ad-hoc Bycatch Committee and the Council. These measures are intended to maintain a haddock possession tolerance as close to zero as practicable, while allowing the herring industry to operate.

DATES: The expiration date of the amendments published June 13, 2005 (70 FR 34055) regarding 50 CFR 648.14, 648.15, 648.80, 648.83, and 648.86 is extended from December 10, 2005 to June 6, 2006. The amendment to 15 CFR 902.1 and 50 CFR 648.2 is not affected by this action.

ADDRESSES: Copies of the emergency rule and its Regulatory Impact Review (RIR) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations established under the Fishery Management Plan for the Northeast Multispecies Fishery (NE Multispecies FMP) prohibit vessels fishing for Atlantic herring (herring) from possessing or landing any groundfish species, including haddock. In July 2004, NOAA's Office of Law Enforcement (OLE) observed prohibited juvenile haddock in catches being landed by midwater trawl vessels fishing for herring on Georges Bank (GB). Representatives of the herring industry requested a series of meetings with staff from OLE and the Northeast Regional Office to report that they were encountering haddock unusually high in the water column, and were unable to avoid catching it, even with midwater trawl gear. The issue was raised to the attention of the Council, which voted on March 30, 2005, to request emergency action to authorize all Category I herring vessels to possess up to 1,000 lb (454 kg) of haddock incidentally caught when fishing for herring. NMFS received the Council's formal request for emergency action on April 6, 2005. A temporary rule implementing the emergency measures was published on June 13, 2005 (70 FR 34055), and is effective through December 10, 2005. Public comments were accepted through July 13, 2005.

While these measures are not intended to directly reduce potential interactions between herring vessels and haddock, as interim measures, they are intended to provide an allowance for the herring fishery to operate while the Council develops a long-term solution through Amendment 1 to the Fishery Management Plan for the Atlantic Herring Fishery (Herring FMP). Since Amendment 1 is not expected to be implemented until summer 2006, it is prudent to continue the measures implemented through the emergency rule for an additional 180 days as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

The following provisions are continued through this temporary rule that extends the emergency action: (1) Suspension of the prohibition on the possession of haddock by vessels using purse seines or midwater trawls (including pair trawls), (2) establishment of a 1,000–lb (454–kg) haddock incidental possession limit for Category 1 herring vessels, (3) suspension of the haddock minimum fish size for Category 1 herring vessels, (4) prohibition on the purchase and sale of haddock landed by Category 1 herring vessels for human consumption, (5) establishment of a provision to require herring processors to cull landings made by Category I herring vessels and retain haddock for inspection by enforcement officials, (6) establishment of a requirement to provide advance notification prior to landing for all Category 1 herring vessels via the Vessel Monitoring System (VMS), and (7) establishment of an incidental catch TAC (bycatch cap) on the total amount of haddock that can be landed under the haddock incidental catch possession limit. NMFS will continue to monitor a 270,000–lb (122,470–kg) haddock bycatch cap based on actual landings reported by vessels and dealers/processors, as well as any other landings based on observer reports or enforcement actions. As of November 2005, only an estimated 11.32 percent of the total haddock bycatch cap have been reported landed from Category 1 herring vessels. If these actual reported or observed landings under the incidental possession limit reach the bycatch cap, the directed herring fishery in the GB haddock stock area will be closed, and a prohibition on the possession of haddock would be reinstated for all Category 1 herring vessels fishing in all other areas. The current absolute prohibition on the possession of haddock appears unrealistic, given the potential for haddock and herring interactions. The measures being extended through this rule reflect the intention of maintaining a haddock possession tolerance as close to zero as practicable, while allowing the herring industry to operate. According to all available data, Category 1 herring vessels have done well in avoiding haddock during the initial effective period of the emergency rule. However, as a precautionary measure it is prudent to continue the emergency action for up to an additional 180 days, or until Amendment 1 to the Herring FMP can be implemented, if approved.

This temporary rule maintains the current cap on the total amount of observed and reported haddock that can be landed by Category 1 herring vessels. The bycatch cap is a backstop on the total amount of haddock permitted to be landed in order to mitigate any unexpected haddock harvest levels. Thus, the herring fishery will not be allowed an unlimited harvest of haddock. NMFS will use landings reported by vessels and dealers/processors, as well as any other landings reported through observer reports or enforcement actions, to determine if observed and reported landings reach the bycatch cap level. If the bycatch cap is reached, the directed herring fishery in the GB haddock stock area will be closed, and the emergency measures that authorize Category 1 vessels to possess haddock will be terminated. If the fishery is closed due to attainment of the bycatch cap, the measures established by this action to require herring processors and dealers to retain haddock landed by Category 1 herring vessels would remain in effect, as would the requirement for Category 1 herring vessels to provide advance notification of landing, to ensure that the closure is enforceable.

Management Measures

Additional background and explanation of the management measures being extended by this temporary rule contained in the preamble of the June 13, 2005, emergency rule and are not repeated here.

Comments and Responses

Nine letters were received during the comment period for the initial temporary rule implementing the emergency action to address haddock bycatch in the herring fishery. These comments included two letters from non-governmental organizations, one letter from the Maine Department of Marine Resources, five letters from industry members, and one letter from the general public. NMFS has not

responded to the comments that were not specific to the emergency management measures contained in the initial temporary rule. The comments are summarized and addressed in the proceeding paragraphs.

Rationale Behind a Haddock Bycatch Allowance in the Herring Fishery

Comment 1: Four comments were received questioning the rationale for allowing Category 1 herring vessels to catch haddock when this species was previously prohibited. Commenters stated that Category 1 herring vessels should not be allowed to catch haddock, since they use a mesh size that is prohibited in the directed haddock fishery, and because herring vessels are not historical participants in the groundfish fishery and should, therefore, not be eligible to participate in any capacity now that the haddock resource is recovering.

Response: Some allowance to allow Category 1 herring vessels to land haddock is needed to allow the herring fishery to operate. Regulations prior to the emergency action prohibited any possession of haddock by Category 1 herring vessels. This temporary action allows a limited amount of haddock to be possessed if caught coincidental to the herring fishery. The 270,000–lb (122,470–kg) haddock bycatch cap, is roughly equivalent to 1 percent of the 2005 GB haddock bycatch cap and less than 1 percent of the Council-recommended 2006 GB haddock total allowable catch (TAC). The groundfish fleet only caught 16 percent of the 2004 Eastern U.S./Canada haddock TAC, and has only caught 7 percent of the 2005 haddock TAC as of November 2005. As a result, it is not expected that the bycatch cap will hinder harvesting efforts in the directed haddock fishery, nor will it undermine haddock conservation measures of the NE Multispecies FMP. It is also important to note that NMFS has prohibited Category 1 herring vessels from selling landed haddock for human consumption, which significantly reduces any incentive to catch haddock.

Monitoring of the Haddock TAC

Comment 1: Three comments were received regarding the monitoring of the haddock bycatch cap. Commenters requested that reported haddock catch be extrapolated to the entire Category 1 herring vessel fishing trips, similar to bycatch monitoring programs in the groundfish fishery.

Response: This action does not include a measure to extrapolate the reported haddock bycatch to all Category 1 herring trips, as the haddock bycatch events of the summer of 2004 showed that haddock bycatch events were not consistent across the fishery, but rather rare events. This variability led NMFS to conclude that it could not meaningfully extrapolate landings of haddock to the entire herring fishery. Furthermore, the 2005 herring fishing year was the first fishing year in which NMFS at-sea observers used a newly developed sampling protocol for determining the percent composition of haddock in the herring catch.

Comment 2: Two comments were received requesting that NMFS specify the level of at-sea observer coverage and the dockside monitoring protocol in the temporary rule.

Response: NMFS has relied on its existing programs to monitor the fishery. It would not be appropriate for NMFS to arbitrarily commit resources that it can not guarantee would be available for the duration of the emergency, and that may not be necessary to get reliable information sufficient to monitor this fishery.

Duration of Herring Fishery Closure Area if Bycatch Cap is Exceeded

Comment 1: One comment was received requesting that NMFS clarify how the closure of the herring fishery in the GB stock area would be administered if the haddock bycatch cap is attained. The commenter noted that a new herring fishing year begins January 1, 2006, and a new groundfish fishing year begins May 1, 2006. The commenter asked when a closure, if required, would end.

Response: Although not explicit in the initial temporary rule it is the intention of NMFS that the GB haddock stock area would re-open to the harvest of herring upon the expiration of the emergency rule that authorized the closure, unless additional management measures are implemented that address the situation at that time. However, in the absence of these temporary emergency measures, the haddock bycatch possession limit would be zero.

Area of the GB Haddock Stock Closure

Comment 1: One comment was received regarding the western boundary of the area that would be closed to Category 1 herring vessels if the bycatch cap is reached. The commenter suggests that the western boundary of the closure area includes areas where haddock are sparse, and thus would not serve any benefit in conserving the haddock resource. Furthermore, the commenter stated that this area is important to the herring fishery and should not be included in any closure.

Response: Including the entire GB stock area as part of the area that would be closed once the haddock bycatch cap is reached was a provision recommended by the Council's Bycatch Committee to ensure that no further incidental haddock catch occurs in the herring fishery. The stock that NMFS is trying to protect through this action is the GB haddock stock. Thus, it is prudent to close the GB haddock stock area, already defined in the regulations, if and when it is determined that the herring fishery has reached the bycatch cap in a given groundfish fishing year.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This action continues emergency measures implemented June 13, 2005, for 180 days beyond the current expiration date of December 10, 2005, because the conditions prompting the initial emergency action still remain. The public was provided with the opportunity to submit public comment on these measures, and those comments are responded to in this rule. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) finds that it would be impracticable and contrary to the public interest to delay the extension of these measures by providing additional opportunities for public comment, and finds good cause to waive additional public comments under U.S.C. 553 (b)(B).

Because this rule continues to relieve a restriction by maintaining a haddock possession limit for Category 1 herring vessels, it is not subject to the 30–day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). The possession limit for haddock for vessels using purse seine or midwater trawl gear in the Gulf of Maine and Georges Bank Exemption Area, absent this temporary rule, is 0 lb (0 kg). This emergency action continuance will maintain the haddock possession limit at 1,000 lb (454 kg) for these vessels.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirement

This emergency rule extends a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Category 1 herring vessels will remain required to notify OLE via VMS of the port in which they will land their catch. Notice is required prior to landing. 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. These requirements have been approved by the Office of Management and Budget (OMB) under control number 0648–0521 (5 min/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 5, 2005.

James W. Balsiger,

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

[FR Doc. 05–23803 Filed 12–5–05; 2:09 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 235
Thursday, December 8, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23215; Directorate Identifier 2005–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Airplanes and Model Avro 146–RJ 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 BAE Systems (Operations) Limited Model BAe 146 airplanes and Model Avro 146–RJ airplanes. This proposed AD would require repetitive replacement of the elevator servo tab hinge bearings, elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings. This proposed AD results from reported incidents of flight control surface restrictions due to the deterioration of flight control surface bearings. We are proposing this AD to prevent corrosion of flight control surface bearings and freezing of moisture inside the bearings, due to loss of lubrication in the bearings, which could lead to flight control restrictions and result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 9, 2006.

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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed 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 in the **ADDRESSES** section. Include the docket number ''FAA–2005–23215; Directorate Identifier 2005–NM–212–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 airplanes and Model Avro 146–RJ airplanes. The CAA advises that the deterioration of flight control surface bearings has contributed to reported incidents of flight control surface restrictions. The bearings are sealed for life with a light dust shield and no means for re-greasing. Over time, lubrication in the bearings is lost and moisture can enter into the bearing assembly, causing the bearings to corrode. This corrosion could lead to flight control restrictions. If moisture in the bearings freezes, this also could lead to flight control restrictions. Loss of lubrication in the bearings, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.27–177, dated June 3, 2004. The service bulletin describes procedures for repetitively replacing the elevator servo tab hinge bearings, elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2005–0014, dated May 31, 2005, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom 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 CAA has kept the FAA informed of the situation described above. We have examined the CAA'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.

Costs of Compliance

This proposed AD would affect about 21 airplanes of U.S. registry. The proposed actions would take about 75 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $3,192 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $169,407, or $8,067 per airplane, per replacement cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–23215; Directorate Identifier 2005–NM–212–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 9, 2006.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from reported incidents of flight control surface restrictions due to the deterioration of flight control surface bearings. We are issuing this AD to prevent corrosion of flight control surface bearings and freezing of moisture inside the bearings, due to loss of lubrication in the bearings, which could lead to flight control restrictions and result in reduced controllability of the airplane.

Compliance

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

Repetitive Replacement

(f) Before the accumulation of 96 months on a bearing since new, or within 16 months after the effective date of this AD, whichever is later: Replace the elevator servo tab hinge bearings, elevator servo tab mechanism bearings, elevator trim tab hinge bearings, and elevator trim tab drive rod bearings with new bearings, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.27–177, dated June 3, 2004. Repeat the replacements thereafter at intervals not to exceed 96 months.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) British airworthiness directive G–2005–0014, dated May 31, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on November 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23778 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23213; Directorate Identifier 2005–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 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

Boeing Model 757 series airplanes. The existing AD currently requires revising the Airworthiness Limitations Section of the maintenance manual (757 Airworthiness Limitations Instructions (ALI)) to incorporate certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSEs). This proposed AD would require incorporating a new revision to the Airworthiness Limitations section of the Instructions of Continued Airworthiness to mandate certain repetitive inspections for fatigue cracking of PSEs. This proposed AD also would add airplanes to the applicability in the existing AD. This proposed AD results from a new revision to the ALI. We are proposing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: We must receive comments on this proposed AD by January 23, 2006.

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

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

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–2005–23213; Directorate Identifier 2005–NM–192–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 can 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

On October 4, 2001, we issued AD 2001–20–12, amendment 39–12460 (66 FR 52492, October 16, 2001), for certain Boeing Model 757 series airplanes. That AD requires revising the Airworthiness Limitations Section of the maintenance manual (757 Airworthiness Limitations Instructions (ALI)) to incorporate certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSEs). That AD resulted from analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSEs to be added to the ALI. We issued that AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2001–20–12, a new revision to the ALI has been issued which mandates certain inspections to meet the damage tolerance requirements of 14 CFR 25.571.

Relevant Service Information

We have reviewed Section 9, ''Airworthiness Limitations and Certification Maintenance Requirements'' of Boeing 757 Maintenance Planning Data (MPD) Document D622N001–9, Revision ''June 2005.'' That document is the ALI of the maintenance manual to which this proposed AD refers. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSEs (identified as structural significant items (SSI) in the ALI). That document explicitly identifies, for the first time, all of the PSEs that are to be inspected in accordance with the requirements of the ALI. Accomplishing the actions specified in the ALI is intended to adequately address the unsafe condition.

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 2001–20–12 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in the service information described previously. This proposed AD also would add airplanes to the applicability in the existing AD.

Explanation of Change Made to This Proposed AD

We have revised the ''Alternative Methods of Compliance (AMOCs)'' paragraph in this proposed AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2001–20–12. Since AD 2001–20–12 was issued, the AD format has been revised, and the paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2001–20–12	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (c)	Paragraph (g).

Costs of Compliance

There are about 1,038 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 673 airplanes of U.S. registry.

The actions that are required by AD 2001–20–12 and retained in this proposed AD 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 currently required actions is $65 per airplane.

The new proposed actions 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 new actions specified in this proposed AD for U.S. operators is $43,745, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 39–12460 (66 FR 52492, October 16, 2001) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–23213; Directorate Identifier 2005–NM–192–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 23, 2006.

Affected ADs

(b) This AD supersedes AD 2001–20–12.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, and –300 series airplanes, certificated in any category.

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

Unsafe Condition

(d) This AD results from a new revision to the Airworthiness Limitations Section of the maintenance manual (757 Airworthiness Limitations Instructions (ALI)). We are issuing this AD to ensure that fatigue cracking of various PSEs is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

Compliance

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

Requirements of AD 2001–20–12

Revision of Airworthiness Limitations and Certification Maintenance Requirements

(f) For airplanes affected by or subject to the requirements of AD 2001–20–12: Within 3 years after November 20, 2001 (the effective date of AD 2001–20–12), revise Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document entitled ''Airworthiness Limitations and Certification Maintenance Requirements (CMRs)'' to incorporate Subsection B. of Boeing Document D622N001–9, Revision ''May 1997,'' or Revision ''November 1998.'' Accomplishing the requirements in paragraph (h) of this AD ends the requirements in this paragraph.

Note 2: For the purposes of this AD, the terms Principal Structural Elements (PSEs) as used in this AD, and Structural Significant Items (SSIs) as used in Section 9 of Boeing 757 MPD Document, are considered to be interchangeable.

No Alternative Inspections/Inspection Intervals

(g) Except as provided in paragraph (j) of this AD: After the actions required by paragraph (f) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the PSEs contained in Boeing Document D622N001–9, Revision ''May 1997'' or ''November 1998.''

New Actions Required by This AD

(h) For all airplanes: Within 36 months after the effective date of this AD, revise Section 9, ''Airworthiness Limitations and CMRs'' of the Boeing 757 MPD to incorporate Subsection B. of Boeing Document D622N001–9, Revision ''June 2005.'' Accomplishing the requirements in this paragraph ends the requirements in paragraph (f) of this AD.

No Alternative Inspections/Inspection Intervals

(i) Except as provided in paragraph (j) of this AD: After the actions required by paragraph (h) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the PSEs contained in Boeing 757 MPD Document D622N001–9, Revision ''June 2005.''

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously in accordance with AD 2001–20–12, are approved as AMOCs for the corresponding provisions of this AD.

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

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

Issued in Renton, Washington, on November 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23777 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–172–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes, that would have required installation of a linear fluid-filled damper between each elevator surface and the airplane structure on both the left and right sides of the airplane, along with related structural and system modifications. This new action revises the proposed rule by updating and adding service information, and changing the compliance time. The actions specified by this new proposed AD are intended to prevent pitch oscillation (vertical bouncing) of the fuselage due to excessive ice buildup on the elevator servo tab, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 3, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''2002–NM–172–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–172–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–172–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 2, 2004 (69 FR 31045). That NPRM would have required installation of a linear fluid-filled damper between each elevator surface and the airplane structure on both the left and right sides of the airplane, along with related structural and system modifications. That NPRM was prompted by a manufacturer's report that, due to excessive ice buildup on the elevator servo tab under certain unusual atmospheric conditions, pitch oscillation (vertical bouncing) of the fuselage can occur. That condition, if not corrected, could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the original NPRM.

Request To Include Additional Service Bulletin

One commenter requests that we revise the NPRM by adding BAE Systems (Operations) Limited Modification Service Bulletin SB.27–174–01692G, dated December 10, 2001. The commenter states that it recently initiated a program to accomplish the actions specified in the NPRM and states that this service bulletin was needed to properly complete the specified modifications. The commenter asserts that this service bulletin should also be included in the NPRM.

We agree with this request. Since the original NPRM was published, we have reviewed BAE Systems (Operations) Limited Modification Service Bulletin SB.27–169–01692A, Revision 1, dated July 11, 2002. Service Bulletin SB.27–169–01692A, Revision 1, refers to Service Bulletin SB.27–174–01692G, dated December 10, 2001, as a source of additional actions that must be accomplished prior to or concurrently with the actions of the other secondary service bulletins specified in Service Bulletin SB.27–169–01692A, Revision 1. The other secondary service bulletins have also been revised. We have reviewed those revisions and revised this supplemental NPRM to include the actions specified in Service Bulletin SB.27–174–01692G and to refer to all revised service bulletins as appropriate sources of service information to accomplish the AD. We have also added new paragraph (b) to this supplemental NPRM to give credit for accomplishing the proposed requirements before the effective date of this AD using earlier revisions of the service information; and have accordingly re-identified existing paragraph (b) and subsequent paragraphs in this supplemental NPRM.

Request To Extend Compliance Time

The same commenter requests that we extend the compliance time of the NPRM. The commenter states that it would be very difficult to accomplish the proposed modifications within the specified 18-month period unless airplane flight schedules are interrupted, which would reduce airplane availability and could have a negative impact on the flying public. The commenter asserts that the modifications are so interconnected that the work cannot be accomplished in sections or in multiple overnight maintenance visits. The commenter feels that, since the modifications would require more than 80 work hours to accomplish, a much more satisfactory compliance time of 30 months would allow accomplishing the modifications during the next scheduled heavy maintenance visit or C-check with no additional safety risk or adverse scheduling consequence to the flying public.

We partially agree with this request. When we re-examined the original issue of BAE Systems (Operations) Limited Modification Service Bulletin SB.27–169–01692A, dated December 10, 2001, we determined that the compliance time shown in the original NPRM did not accurately reflect the service bulletin. Therefore, we are revising paragraph (a) of this supplemental NPRM to specify a compliance time of 24 months, which reflects the compliance time of the original issue of Service Bulletin SB.27–169–01692A. The proposed compliance time should provide sufficient time for operators to accomplish the requirements of the AD while still maintaining an adequate level of safety causing little inconvenience to the flying public. However, as provided by paragraph (d) of the AD, we may consider requests for approval of an alternative method of compliance (AMOC) if data are submitted to substantiate that any requested change in the compliance time would provide an acceptable level of safety.

Request To Correct Original Release Date of Service Bulletin

The same commenter requests that we correct the original release date shown for Service Bulletin SB.27–169–01692A. The commenter states that the date is incorrect, asserting that it should be December 10, 2001, not December 10, 2003.

We partially agree with this request. In the original NPRM, the initial release date of Service Bulletin SB.27–169–01692A appears in the Discussion section as December 10, 2001, which is correct, but appears in paragraph (a) as December 10, 2003, which is a typographical error. However, Service Bulletin SB.27–169–01692A has been revised. Therefore, we have revised paragraph (a) of this supplemental NPRM to refer to Service Bulletin SB.27–169–01692A, Revision 1, dated July 11, 2002.

Request To Permit Use of Future Revisions of Service Information

The same commenter and a second commenter request that the NPRM be revised to include a statement similar to ''or later approved revisions'' of the specified service information. The first commenter states that that the specified revisions of the service bulletins are outdated and, in many cases, are no longer available to operators and asserts that such a statement would allow operators to accomplish required actions using any revision of service information. The commenter suggests that including the proposed statement rather than updating the service information references in the proposed AD would provide substantiation to operators for credit for actions performed using earlier revisions of service information. The second commenter supports the first commenter's request and asserts that many others who are concerned with the use of service information also support this request. The commenters assert this would greatly relieve the paperwork burden for operators and the FAA.

We do not agree with this request. We cannot use ''or later FAA-approved revisions'' or any similar phrase in an AD when referring to the service document because doing so violates Office of the Federal Register (OFR) regulations for approval of materials ''incorporated by reference'' in rules. In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language, or to submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' In either case, the document must actually exist. To allow operators to use later revisions of the referenced document (issued after the revision cited in this AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an AMOC with this AD as provided by paragraph (d) of this AD. We have not changed the supplemental NPRM in this regard.

Request To Specify Meteorological Conditions

One commenter requests that we revise the proposed AD to specify what types of meteorological or ''unusual atmospheric'' conditions could lead to the type of severe ice buildup described by the original NPRM. The commenter states that certain existing industry procedures allow flightcrews to avoid or exit atmospheric conditions that can cause severe ice accretion, and that apparently no evaluation was made of flightcrew ability to control an airplane having a severe ice buildup. The commenter asserts that the NPRM should contain procedures that allow the flightcrew to detect and exit atmospheric conditions that could cause severe ice buildup on the elevator servo

tabs, and to be aware of changes that may occur to the handling of an airplane during a severe ice buildup. The commenter is concerned that the NPRM might be addressing only a symptom of a potentially hazardous handling characteristic of the airplane in icing conditions.

We do not agree with this request. The commenter is correct in stating that certain existing industry procedures allow flightcrews to avoid or exit atmospheric conditions that can cause severe ice accretion. However, the awareness and use of such procedures depends on flightcrew training, as does flightcrew ability to recognize atmospheric conditions that would make those procedures applicable. Therefore, any discussion of meteorological conditions or flightcrew procedures and ability to safely operate the airplane under such conditions exceeds the intent of this AD, which is to correct an unsafe condition. We have not changed the supplemental NPRM in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Explanation of Change to Applicability

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

Conclusion

Since these changes expand the scope and increase the costs of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry would be affected by this supplemental NPRM. Accomplishment of the proposed actions specified in the referenced BAE Systems (Operations) Limited modification service bulletins would require an approximate number of work hours as shown in the following table, at an average labor rate of $65 per work hour.

WORK HOURS AND COSTS

BAE Systems (Operations) Limited modification service bulletin	Parts costs	Work hours	Costs per airplane
SB.27–167–01614C.D.G	$2,937	12	$3,717
SB.27–168–01614EH	713	40	3,313
SB.27–169–01692A	10,415	8	10,935
SB.27–170–01692E *	826	20	2,126
SB.27–171–01692F **	826	12	1,606
SB.27–174–01692G	N.A.	1	65

* (for Model BAE 146 series airplanes only)
** (for Model Avro 146–RJ series airplanes only)

Based on these figures, the total cost impact of this proposed AD on U.S. operators is estimated to be between $1,079,980 and $1,108,580, or between $19,636 and $20,156 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–172–AD.

Applicability: All Model BAe 146–100A, –200A, and –300A series airplanes and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch oscillation (vertical bouncing) of the fuselage due to excessive ice buildup on the elevator servo tab, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 24 months after the effective date of this AD, install linear fluid-filled dampers between each elevator surface and the airplane structure on both the left and right sides of the airplane and perform the related structural and system modifications, by doing all actions in accordance with the Accomplishment Instructions of the service bulletins specified in Table 1 of this AD; as applicable.

TABLE 1.—SERVICE INFORMATION

BAE Systems (Operations) Limited modification service bulletin	Revision level	Date
SB.27–167–01614C.D.G	2	July 25, 2003.
SB.27–168–01614EH	2	July 25, 2003.
SB.27–169–01692A	1	July 11, 2002.
SB.27–170–01692E, including Appendix 1, Revision 1, dated August 27, 2001 *	3	May 16, 2003.
SB.27–171–01692F, including Appendix 1, dated March 20, 2001 **	1	July 10, 2002.
SB.27–174–01692G	Original	December 10, 2001.

* (for Model BAE 146 series airplanes only)
** (for Model Avro 146–RJ series airplanes only)

Credit for Prior Revisions of Service Information

(b) Actions accomplished before the effective date of this AD in accordance with applicable service information listed in Table 2 of this AD are considered acceptable for compliance with the corresponding actions specified in paragraph (a) of this AD.

TABLE 2.—PRIOR REVISIONS OF SERVICE INFORMATION

BAE Systems (Operations) Limited modification service bulletin	Revision level	Date
SB.27–167–01614C.D.G	Original	January 2, 2001.
SB.27–167–01614C.D.G	1	July 11, 2002.
SB.27–168–01614EH	Original	January 22, 2001.
SB.27–168–01614EH	1	July 11, 2002.
SB.27–169–01692A	Original	December 10, 2001.
SB.27–170–01692E, including Appendix 1, dated August 27, 2001 *	Original	March 20, 2001.
SB.27–170–01692E, including Appendix 1, Revision 1, dated August 27, 2001 *	1	August 27, 2001.
SB.27–170–01692E, including Appendix 1, Revision 1, dated August 27, 2001 *	2	July 10, 2002.
SB.27–171–01692F, including Appendix 1, dated March 20, 2001 **	Original	March 20, 2001.

* (for Model BAE 146 series airplanes only)
** (for Model Avro 146–RJ series airplanes only)

No Reporting Requirement

(c) Although all referenced service bulletins describe procedures for reporting accomplishment to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

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

Note 1: The subject of this AD is addressed in British airworthiness directive 005–12–2001.

Issued in Renton, Washington, on November 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23776 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23023; Directorate Identifier 2005–CE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Model SR20 and SR22 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 Cirrus Design Corporation (CDC) Model SR20 and SR22 airplanes. This proposed AD would require you to inspect the fuel line and wire bundles for any chafing damage; if any chafing damage is found, replace any damaged fuel line and repair any damaged wires or sheathing of the wire harness; and install the forward loop clamp, fuel line shield, aft loop clamp, and anti-chafe tubing. This proposed AD results from reports of fuel line leaks resulting from wire chafing on the fuel lines. We are issuing this proposed AD to detect and correct damage to the fuel line and wire bundles, which could result in fuel leaks. This failure could lead to unsafe fuel vapor within the cockpit and possible fire.

DATES: We must receive comments on this proposed AD by February 7, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: 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.

Contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737, or on the Internet at *http://www.cirrusdesign.com* for the service information identified in this proposed AD.

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

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, ACE–117C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–23023; Directorate Identifier 2005–CE–49–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 rulemaking. Using the search function of the DOT 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.*). 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 Dockets

Where can I go to view the docket information? You may examine the docket that contains the proposal, any comments received and any final disposition on the Internet at *http://dms.dot.gov,* or in person at the DOT Docket Offices between 9 a.m. and 5 p.m., 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.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Discussion

What events have caused this proposed AD? The FAA has received two reports of fuel line leaks within a compartment in the center console of Model SR22 airplanes. This compartment is drained to the belly of the aircraft. Investigation found that the leaks resulted from wire chafing on the fuel lines.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in unsafe fuel vapor within the cockpit and possible fire.

Relevant Service Information

Is there service information that applies to this subject? We have reviewed Cirrus Design Corporation Service Bulletin SB 2X–28–04 R1, Issued: November 1, 2005, Revised: November 8, 2005.

What are the provisions of this service information? The service information describes procedures for:

- Fuel line chafing inspection; and
- Protective measures to prevent a potential chafing condition.

FAA's Determination and Requirements of the Proposed AD

Why have we determined AD action is necessary and what would this proposed AD require? We are proposing this AD to address an unsafe condition that we determined is likely to exist or develop on other products of this same type design. The proposed AD would require you to inspect the fuel line and wire bundles for any chafing damage; if any chafing damage is found, replace any damaged fuel line and repair any damaged wires or sheathing of the wire harness; and install the forward loop clamp, fuel line shield, aft loop clamp, and anti-chafe tubing. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 2,135 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? The manufacturer will cover parts and labor costs if the work is done within the standard airplane warranty period and the work is done at any of the manufacturer's authorized service centers.

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 rulemaking action.

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.

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 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:

Cirrus Design Corporation: Docket No. FAA–2005–23023; Directorate Identifier 2005–CE–49–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 7, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
SR20	1005 through 1581.
SR22	0002 through 1643 and 1645 through 1662.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from reports of fuel line leaks resulting from wire chafing on the fuel lines. The actions specified in this AD are intended to detect and correct damage to the fuel line and wire bundles, which could result in fuel leaks. This failure could lead to unsafe fuel vapor within the cockpit and possible fire.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the fuel line and wire harness for any chafing damage.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	Follow Cirrus Design Corporation Service Bulletin SB 2X–28–04 R1, Issued: November 1, 2005, Revised: November 8, 2005.
(2) If any chafing damage is found as a result of the inspection required by paragraph (e)(1) of this AD: (i) Replace any damaged fuel line; and (ii) Repair any damaged wires or sheathing of the wire harness.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Cirrus Design Corporation Service Bulletin SB 2X–28–04 R1, Issued: November 1, 2005, Revised: November 8, 2005.
(3) Install the following: (i) Forward loop clamp; (ii) Fuel line shield; (iii) Aft loop clamp; and (iv) Anti-chafe tubing.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD.	Follow Cirrus Design Corporation Service Bulletin SB 2X–28–04 R1, Issued: November 1, 2005, Revised: November 8, 2005.

May I Request an Alternative Method of Compliance?

(f) The Manager, Chicago Aircraft Certification Office (ACO), FAA, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

(g) For information on any already approved alternative methods of compliance or for information pertaining to this AD, contact Wess Rouse, Aerospace Engineer, ACE–117C, Chicago ACO, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; facsimile: (847) 294–7834.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737 or on the Internet at *www.cirrusdesign.com.* To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

The docket number is Docket No. FAA–2005–23023; Directorate Identifier 2005–CE–49–AD.

Issued in Kansas City, Missouri, on December 2, 2005.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–23772 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21691; Directorate Identifier 2005–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Model 14RF–19 Propellers

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 Hamilton Sundstrand (formerly Hamilton Standard Division of United Technologies Corporation) Model 14RF–19 propellers. This proposed AD would require replacing certain actuator yokes with improved actuator yokes. This proposed AD results from certain propeller system actuator yoke arms breaking during flight. We are proposing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration, requiring the pilot to feather the propeller, and could contribute to reduced controllability of the airplane.

DATES: We must receive any comments on this proposed AD by February 6, 2006.

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

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

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

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

• Fax: (202) 493–2251.

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

You can get the service information identified in this proposed AD from Hamilton Sundstrand, A United Technologies Company, Publications Manager, Mail Stop 2AM–EE50, One Hamilton Road, Windsor Locks, CT 06096.

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

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21691; Directorate Identifier 2005–NE–13–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Hamilton Sundstrand notified us that there have been four occurrences of propeller system actuator yoke arms, part number (P/N) 810436–2, breaking during flight. A high-stress concentration that can exist at the intersection of the wear plate face of the forward yoke ear and the existing machining cut for the anti-torque and bushing caused these breaks. This condition, if not corrected, could result in high propeller vibration, requiring the pilot to feather the propeller, and could contribute to reduced controllability of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003, that describes procedures for installing a new propeller system actuator yoke arm, P/N 810436–3.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing the actuator yoke arm, P/N 810436–2 on model 14RF–19 propellers with an improved actuator yoke arm, P/N 810436–3. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that 80 actuator yoke arms installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that the required parts would cost approximately $1,350 per propeller and that it would take about 2 work hours per propeller to perform the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to be $118,400.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal

Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Hamilton Sundstrand: Docket No. FAA–2005–21691; Directorate Identifier 2005–NE–13–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 6, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hamilton Sundstrand Model 14RF–19 propellers with propeller system actuator yoke arms, part number (P/N) 810436–2, which might be installed in actuator assemblies P/N 790119–6. These propellers are installed on, but not limited to, SAAB 340 airplanes.

Unsafe Condition

(d) This AD results from propeller system actuator yoke arms breaking during flight. We are issuing this AD to prevent actuator yoke arms breaking during flight, which could cause high propeller vibration, requiring the pilot to feather the propeller, and could contribute to reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 60 days after the effective date of this AD, unless the actions have already been done.

Install Improved Actuator Yoke Arms

(f) Using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003, replace all actuator yoke arms, P/N 810436–2 with improved actuator yoke arms, P/N 810436–3.

(g) Mark newly installed actuators using the Accomplishment Instructions of Hamilton Sundstrand Service Bulletin 14RF–19–61–113, Revision 1, dated September 2, 2003.

(h) After the effective date of this AD, do not install any actuator yoke arms, P/N 810436–2, into any propeller assembly.

Alternative Methods of Compliance

(i) The Manager, Boston Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on December 2, 2005.

Peter A. White,

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

[FR Doc. 05–23770 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23081; Airspace Docket No. 05–AAL–31]

RIN 2120–AA66

Proposed Amendments to Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke colored Federal Airway B–12, modify three colored Federal Airways B–4, R–50 and G–7, and establish colored Federal Airway R–4 in Alaska. These amendments would remove all airways and routes off the Bishop, AK, Nondirectional Radio Beacon (NDB) in preparation for the NDB's eventual decommissioning from the National Airspace System (NAS).

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–23081 and Airspace Docket No. 05–AAL–31, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–23081 and Airspace Docket No. 05–AAL–31) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–23081 and Airspace Docket No. 05–AAL–31.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

Background

In October 2005, it was determined that continued operation of the Bishop, AK, NDB was in jeopardy at its current location because of riverbank erosion along the Yukon River to within 150 feet of the NDB site. This action is needed to reconfigure the airways to exclude the Bishop, AK, NDB.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revoke colored Federal Airway B–12, modify three colored Federal Airways B–4, R–50 and G–7, and establish colored Federal Airway R–4 in Alaska. The FAA is proposing this action to remove all airways and routes off the Bishop NDB, AK, in preparation for the NDB's eventual decommissioning from the NAS.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6009(d)—Blue Federal Airways

* * * * *

B–12 [Revoked]

* * * * *

B–4 [Revised]

From Utopia Creek, AK, NDB; Evansville, AK, NDB; to Yukon River, AK, NDB.

* * * * *

Paragraph 6009(b)—Red Federal Airways

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R–4 [New]

From Chena, AK, NDB; to Bear Creek, AK, NDB

* * * * *

R–50 [Revised]

From Nanwak, AK, NDB, via Oscarville, AK, NDB; Anvik, AK, NDB.

* * * * *

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–7 [Revised]

From Gambell, AK, NDB; Fort Davis, AK, NDB; Norton Bay, AK, NDB

* * * * *

Issued in Washington, DC, November 29, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–23759 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22708; Airspace Docket No. 05–AAL–32]

RIN 2120–AA66

Proposed Modification of Offshore Airspace Areas: Gulf of Alaska Low and Control 1487L; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Gulf of Alaska Low and Control 1487L Offshore airspace areas in Alaska. Specifically, this action proposes to modify the Gulf of Alaska Low and Control 1487L airspace areas in the vicinity of the Yakutat Airport, Yakutat, AK, by lowering the affected controlled airspace floor to 700 feet mean sea level (MSL) for the Gulf of Alaska Low, and 1,200 feet MSL for Control 1487L. The FAA is proposing this action to provide additional controlled airspace for the safety of aircraft executing instrument flight rules (IFR) operations at the Yakutat Airport.

DATES: Comments must be received on or before January 23, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–22708 and Airspace Docket No. 05–AAL–32, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22708 and Airspace Docket No. 05–AAL–32) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–22708 and Airspace Docket No. 05–AAL–32.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before

taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Gulf of Alaska Low airspace area, AK, by lowering the floor to 700 feet above the surface in the vicinity of Yakutat Airport, Yakutat, AK. Additionally, Control 1487L airspace area, AK, will be lowered from 5,500 feet MSL to 1,200 feet MSL in the vicinity of Yakutat Airport. These areas provide controlled airspace beyond 12 miles from the shoreline of the United States in those areas where there is a requirement to provide IFR enroute Air Traffic Control services and within which the United States is applying domestic procedures. The purpose of this proposal is to establish controlled airspace sufficient in size to support the Terminal Arrival Area associated with new IFR operations at Yakutat Airport, AK. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed three new standard instrument approach procedures (SIAP), revised seven SIAPs and revised one departure procedure for the Yakutat Airport. Additional controlled airspace extending upward from 700 feet and 1,200 feet above the surface in international airspace would be created by this action. The proposed airspace is sufficient to support IFR at the Yakutat Airport.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Gulf of Alaska Low, AK [Amended]

That airspace extending upward from 700 feet MSL bounded by a line beginning at a point where the 12-mile offshore limit intersects long. 144°30′00″W.; thence eastward 12 miles offshore and parallel to the shoreline to lat. 59°10′36″ N., long. 139°31′10″ W.; to lat. 59°02′49″ N., long. 139°47′45″ W.; to lat. 59°27′12″ N., long. 140°31′10″ W.; thence westward along the south boundary of V–440 to long. 144°30′00″ W.; thence northward along long. 144°30′00″ W.; to the point of beginning. The portion within Control 1487L is excluded.

* * * * *

Control 1487L [Amended]

That airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′34″ N., long. 147°16′06″ W.; thence counterclockwise via the arc of a 149.5-mile radius centered on the Anchorage VOR/DME to the intersection of the 149.5-mile radius arc and a point 12 miles from and parallel to the U.S. coastline; thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary; to lat. 54°32′57″ N., long. 133°11′29″ W.; to lat. 54°00′00″ N., long. 136°00′00″ W.; to lat. 52°43′00″ N., long. 135°00′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to the point of beginning; and that airspace extending upward from 1,200 feet MSL within the area bounded by a line beginning at lat. 59°33′25″ N., long. 141°03′22″ W.; thence southeast 12 miles from and parallel to the U.S. coastline to lat. 58°56′18″ N., long. 138°45′19″ W.; to lat. 58°40′00″ N., long. 139°30′00″ W.; to lat. 59°00′00″ N., long. 141°10′00″ W.; to the point of beginning. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on December 1, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. 05–23757 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133446–03]

RIN 1545–BC37

Guidance on Passive Foreign Investment Company (PFIC) Purging Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations, notice of proposed rulemaking, and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide certain elections for taxpayers, who in limited circumstances, continue to be subject to the excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(e). The regulations are necessary to provide guidance about purging the PFIC taint for such foreign corporations. The regulations will affect U.S. persons that hold stock in a PFIC. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 8, 2006. Outlines of topics to be discussed at the public hearing scheduled for March 22, 2006, at 10 a.m. must be received by March 1, 2006.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–133446–03), room 5203, Internal Revenue Building, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–133446–03), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal Rulemaking Portal at *http://www.regulations.gov* (IRS REG–133446–03). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Ethan Atticks at (202) 622–3840, concerning submissions and the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by February 6, 2006. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in § 1.1297–3(c)(5)(ii). This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income, gain or loss from that taxpayer's interest in the foreign corporation. The collections of information are mandatory. The respondents are shareholders of PFICs.

Estimated total annual reporting burden: 250 hours.

The estimated annual burden per respondent is 1 hour.

Estimated number of respondents: 250.

The estimated annual frequency of responses: One time.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide certain elections for taxpayers that continue to be subject to the excess distribution regime of section 1291 even though the foreign corporation in which they own stock is no longer treated as a PFIC under section 1297(e) or section 1298(b)(1). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It

has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for March 22, 2006, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by March 1, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Ethan Atticks, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.1291–9, paragraph (j)(2)(v) is revised to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(2) * * *

(v) [The text of the proposed amendment to § 1.1291–9(j)(2)(v) is the same as the text for § 1.1291–9T(j)(2)(v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 3. Section 1.1297–0 is revised to read as follows:

§ 1.1297–0 Table of contents.

[The text of proposed § 1.1297–0 is the same as the text of § 1.1297–0T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.1297–3 is added to read as follows:

§ 1.1297–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a section 1297(e) PFIC.

[The text of proposed § 1.1297–3 is the same as the text of § 1.1297–3T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.1298–0 is revised to read as follows:

§ 1.1298–0 Table of contents.

[The text of proposed § 1.1298–0 is the same as the text of § 1.1298–0T published elsewhere in this issue of the **Federal Register**].

Par. 6. In § 1.1298–3, paragraph (e) and paragraph (f) are revised to read as follows:

§ 1.1298–3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

* * * * *

(e) [The text of the proposed revision to § 1.1298–3(e) is the same as the text of § 1.1298–3T(e) published elsewhere in this issue of the **Federal Register**].

(f) [The text of the proposed revision to § 1.1298–3(f) is the same as the text of § 1.1298–3T(f) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–23628 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–138647–04]

RIN 1545–BE30

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Friday, August 26, 2005 (70 FR 50233) providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G.

FOR FURTHER INFORMATION CONTACT: Barbara E. Pie at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–138647–04) that is the subject of this correction is under section 4980 of the Internal Revenue Code.

Need for Correction

As published, REG–138647–04 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–138647–04), which was the subject of FR Doc. 05–16941, is corrected as follows:

1. On page 50235, column 1, in the preamble under the paragraph heading *''Calculating Comparable Contributions''*, first paragraph, line 21, the language, ''under employer's HDHP. The proposed'' is corrected to read ''under the employer's HDHP. The proposed''.

§ 54.4980G–4 [Corrected]

2. On page 50241, column 2, § 54.4980G–4, A–1(b), *Example 8*, line

9, the language ''H contributes $500 to the HSA of each of'' is corrected to read ''H contributes $500 to the HSA of each''.

3. On page 50241, column 2, § 54.4980G–4, A–2, line 3 from the bottom of the paragraph, the language ''back-basis as described in Q & A–3 in'' is corrected to read ''back basis as described in Q & A–3 in''.

4. On page 50242, column 1, § 54.4980G–4, A–3(c), *Example 1*, paragraph (i)(D), line 3, the language ''individual and employed by Employer from'' is corrected to read ''individual and employed by Employer J from''.

5. On page 50242, column 1, § 54.4980G–4, A–3(c), *Example 2*, line 3, the language ''contributes on a monthly pay-as-you-go-basis'' is corrected to read ''contributes on a monthly pay-as-you-go basis''.

6. On page 50242, column 1, § 54.4980G–4, A–3(e), the *Example*, line 3, the language ''contributes on a look-back-basis to the HSAs'' is corrected to read ''contributes on a look-back basis to the HSAs''.

7. On page 50242, column 2, § 54.4980G–4, A–4(a), line 15 from the bottom of the paragraph, the language ''also contribute on a pre-funded-basis to'' is corrected to read ''also contribute on a pre-funded basis''.

8. On page 50243, column 1, § 54.4980G–4, A–7(a), line 3, the language ''determined by rounding to nearest'' is corrected to read ''determined by rounding to the nearest''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E5–7013 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–137243–02]

RIN–1545–BA96

Guidance Necessary To Facilitate Electronic Tax Administration—Updating of Section 7216 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to update the rules regarding the disclosure and use of tax return information by tax return preparers. The proposed regulations announce new and additional rules for taxpayers to consent electronically to the disclosure or use of their tax return information by tax return preparers. The proposed rules provide guidelines for tax return preparers using or disclosing information obtained in the process of preparing income tax returns.

DATES: Written or electronically generated comments must be received by March 8, 2006. Outlines of topics to be discussed at the public hearing scheduled for April 4, 2006, in the Auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by March 14, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–137243–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137243–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–137243–02). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dillon Taylor, at (202) 622–4940; concerning submissions of comments, LaNita Van Dyke of the Publications and Regulations Branch at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7216 of the Internal Revenue Code (Code). Section 7216 imposes criminal penalties on tax return preparers who make unauthorized disclosures or uses of information furnished to them in connection with the preparation of an income tax return. In addition, tax return preparers are subject to civil penalties under section 6713 for disclosure or use of this information unless an exception under the rules of section 7216(b) applies to the disclosure or use.

Section 7216 was enacted by section 316 of the Revenue Act of 1971, Public Law 92–178 (85 Stat. 529, 1971). In 1988, Congress modified the section by limiting the criminal sanction to knowing or reckless unauthorized disclosures. Public Law 100–647, (102 Stat. 3749, 1988). At the same time, Congress enacted the civil penalty that is now found in section 6713. Public Law 100–647, section 6242(a) (102 Stat. 3759, 1988). In 1989, Congress further modified section 7216, directing the Treasury Department to issue regulations permitting disclosures of tax return information for quality or peer reviews. Public Law 101–239, 7739(a) (102 Stat. 3759, 1989).

The Treasury Department and the IRS proposed regulations under section 7216 on December 20, 1972 (37 FR 28070). Final regulations were issued on March 29, 1974 (39 FR 11537). These regulations are divided into three parts: Section 301.7216–1 for general provisions and definitions; Section 301.7216–2 for disclosures and uses that do not require formal taxpayer consent; and section 301.7216–3 for disclosures and uses that require formal taxpayer consent. Since the regulations were adopted in 1974, the Treasury Department and the IRS have amended § 301.7216–2 on occasion, but §§ 301.7216–1 and 301.7216–3 have remained unchanged.

The current regulations were written in a paper filing era. They do not address current common industry practices, such as electronic preparation or filing of tax returns. The regulations are silent on taxpayers' consent to the disclosure or use of tax return information in an electronic environment. The proposed regulations address these issues.

The proposed regulations also contain other modifications to reflect the principle that taxpayers may provide knowing, informed, and voluntary consent to a tax return preparer's use of tax return information for purposes other than tax return preparation. While the ability of a tax return preparer to solicit consent from a taxpayer remains limited under certain circumstances, such as when the taxpayer has already rejected a substantially similar request for consent, these regulations allow a tax return preparer to solicit a taxpayer's consent to use tax return information under certain circumstances that the existing regulations currently prohibit. For example, these proposed regulations allow tax return preparers to obtain consents to use tax return information for solicitation of services or facilities furnished by any person rather than limiting solicitations to the services or facilities offered by the tax return preparer or member of the tax return preparer's ''affiliated group.''

Concurrently, with publication of these proposed regulations, the IRS is publishing a notice containing a proposed revenue procedure that would provide guidance to tax return preparers on the format and content of consents to disclose and consents to use tax return information under § 301.7216–3. The proposed revenue procedure would also provide specific guidance for electronic signatures when a taxpayer executes an electronic consent to the disclosure or use of the taxpayer's tax return information.

Explanation of Provisions

1. Section 301.7216–1 Penalty for Disclosure or Use of Tax Return Information

The regulations revise and clarify several definitions and clarify the scope of the rules. For example, section 7216, rather than section 7701(a)(36) (defining income tax return preparer) or the privacy provisions of Title V of the Gramm-Leach-Bliley Act, Public Law 106–102, (113 Stat. 1338, GLBA), governs the disclosure and use of tax return information by tax return preparers. The GLBA governs the use and disclosure of customer information by financial institutions. Any requirements of the GLBA that may be applicable to tax return preparers do not supersede, alter, or affect the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3. Similarly, the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3 do not nullify any requirements or restrictions of the GLBA, which are in addition to the requirements or restrictions of section 7216 and §§ 301.7216–1 through 301.7216–3.

A. Tax Return Preparer

The definition of *tax return preparer* is revised to distinguish it from the definition of income tax return preparer in section 7701(a)(36); tax return preparers subject to section 7216 include a broader group of persons than income tax return preparers defined in section 7701(a)(36). Some persons who are excluded from the definition of an income tax return preparer under section 7701(a)(36), for example, persons providing secretarial services, are tax return preparers under section 7216, as defined by § 301.7216–1(b)(2). Some of the examples and exclusions have been revised to address common scenarios.

B. Tax Return Information

The revised definition of *tax return information* clarifies that the term encompasses a broader range of information than what taxpayers literally furnish to a tax return preparer. The taxpayer's entitlement to a refund and the amount of the refund are both tax return information. Similarly, information the IRS furnishes a tax return preparer with respect to the processing of a return, including the acknowledgment of acceptance of an electronically-filed return, is tax return information, even though the taxpayer does not communicate that information to the tax return preparer.

C. Use and Disclosure

The proposed regulations add a definition of the term ''use'' to clarify application of that term in the context of electronic preparation and filing. The proposed regulations add a definition of ''disclosure'' to clarify that the term should be broadly construed. The proposed regulations provide that to the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, that transmission of tax return information is a disclosure.

2. Section 301.7216–2 Permissible Disclosures or Uses Without Consent of the Taxpayer

Proposed § 301.7216–2 provides exceptions to the general rule of section 7216(a) that imposes criminal penalties on tax return preparers who make unauthorized disclosures or uses of tax return information. A tax return preparer may disclose or use tax return information as § 301.7216–2 permits without obtaining consent from a taxpayer. A number of subsections dealing with disclosures or uses without consent are proposed in substantially their current form. Some subsections are renumbered to achieve a more logical ordering, and some subsections have been proposed with minor changes to the current language to refine the rules or promote clarity. Some subsections addressing disclosures between tax return preparers have been changed to reflect new rules.

A. Proposed Changes to Specifically Account for Technological, Legal, and Other Developments

(1) Proposed § 301.7216–2(b) provides that disclosures to the IRS that will facilitate electronic tax administration are authorized without the taxpayer's prior written consent. Disclosures that will facilitate electronic tax administration include IRS requests for tax return information to investigate compliance with electronic filing rules or to evaluate the effectiveness of electronic filing programs.

(2) Proposed § 301.7216–2(d) expands current § 301.7216–2(h), which authorizes disclosures to tax return preparers who process tax return information. The proposed regulations provide that disclosures between tax return preparers are authorized when the disclosures (i) assist in the preparation of a return, (ii) as long as the services provided by the recipient of the disclosure are not substantive determinations or advice affecting a taxpayer's reported tax liability; and (iii) as long as the disclosure is to a tax return preparer located in the United States. The proposed regulations clarify that disclosures to other tax return preparers for substantive determinations or advice require the taxpayer's prior written consent. The proposed regulations also provide that tax return preparers' disclosures to other tax return preparers located outside of the United States require the taxpayer's prior written consent. The written consent for disclosure of tax return information outside of the United States is needed because it is difficult for the Secretary to pursue a criminal action under section 7216 against a tax return preparer located outside of the United States or to collect a civil penalty assessed under section 6713 from a tax return preparer located outside the United States. Proposed § 301.7216–2(d) also provides that a tax return preparer may disclose tax return information to contractors performing certain auxiliary services in connection with tax return preparation. For the disclosure to fall within this exception, the tax return preparer must present the individuals receiving the disclosure with a written notice informing them that section 7216 applies to them and describes the requirements and penalties of section 7216. Contractors to whom disclosures are made pursuant to this provision are tax return preparers pursuant to § 301.7216–1(b)(2)(i)(D).

(3) Proposed § 301.7216–2(f) amends current § 301.7216–2(c), regarding disclosures pursuant to an order of a court or an administrative order, demand, summons or subpoena issued by a Federal or State agency, by also authorizing disclosures made pursuant to a subpoena issued by the United States Congress. In addition, the IRS is aware that most state accountancy boards work in conjunction with the American Institute of Certified Public Accountants' (AICPA) Professional Ethics Executive Committee, and state and local bar associations to investigate potential ethical violations by certified public accountants who are members of the AICPA. The proposed amendment

authorizes disclosures to the AICPA made pursuant to an ethics violation investigation of the tax return preparer. The proposed amendment authorizes disclosures made pursuant to a formal demand from the Public Company Accounting Oversight Board.

(4) Proposed § 301.7216–2(g), governing disclosures for use in Treasury investigations or court proceedings, amends current § 301.7216–2(d), which limits disclosures to IRS investigations and court proceedings. This change is necessary because a function within the Treasury Department, but outside of the IRS, may handle some investigations that will require a disclosure of tax return information. Disclosures are also authorized to officers of a court in court proceedings in which a taxpayer-client of a return preparer is a party. The proposed regulations clarify that the tax return preparer need not be a party to a court proceeding for a disclosure to be authorized under this section.

(5) Proposed § 301.7216–2(k) expands the current provision in § 301.7216–2(k) governing the preparation or audit of State or local tax returns to allow the use of tax return information to assist in the preparation of any tax return of the taxpayer under the law of a country other than the United States. Disclosures are also expanded to allow for the preparation of tax returns under the law of another country to the same extent that disclosures are allowed for the preparation and filing of a Federal tax return.

(6) Proposed § 301.7216–2(o) addresses the use of tax return information to prepare statistical compilations and the use of the statistical compilations themselves. Rev. Rul. 79–114 (1979–1 C.B. 441), holds that the current regulations prohibit a tax return preparer's use of tax return information to prepare anonymous statistical compilations unless the affected taxpayers individually consent. Section 301.7216–2(o) will obsolete Rev. Rul. 79–114. Section 301.7216–2(o) will permit the use of tax return information to prepare anonymous statistical compilations for limited purposes related to management or support of the tax return preparer's business. The tax return information will remain protected from any other use and disclosure outside the limited purposes of this proposed section.

B. Other Changes to Existing Provisions

(1) Proposed § 301.7216–2(h) amends current § 301.7216–2(e), which authorizes attorneys and accountants to disclose tax return information to third parties in the normal course of rendering legal or accounting services if the taxpayer expressly or impliedly consents to the disclosure. The proposed regulations remove the requirement that the taxpayer's express or implied consent is necessary before these types of disclosures can be made because implied consent would exist in virtually every situation when an attorney or accountant is required to disclose tax return information to a third party in the normal course of providing legal or accounting services to a taxpayer. The proposed regulations provide that these disclosures are authorized unless the taxpayer directs otherwise.

(2) Proposed § 301.7216–2(i) amends current § 301.7216–2(f), which provides that corporate fiduciaries are authorized to disclose tax return information to a taxpayer's attorney, accountant, or investment advisor only with the taxpayer's express or implied consent. As with disclosures made by attorneys and accountants, a taxpayer will generally give implied consent to disclosures by corporate fiduciaries to a taxpayer's attorney, accountant, or investment advisor. The proposed regulations remove the express or implied consent requirement, and provide instead that disclosures are authorized unless the taxpayer directs otherwise.

(3) Proposed § 301.7216–2(c) amends current § 301.7216–2(i), regarding disclosures by an officer, employee, or member of a tax return preparer to another officer, employee, or member of the same tax return preparer to perform services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer. The proposed regulations provide that these disclosures or uses are authorized without the taxpayer's written consent only if the officer, employee, or member to whom the information is disclosed is located within the United States. The written consent for disclosure of tax return information outside of the United States is needed because it is difficult for the Secretary to pursue a criminal action under section 7216 against a tax return preparer located outside of the United States or to collect a civil penalty assessed under section 6713 from a tax return preparer located outside the United States. Therefore, a taxpayer's written consent is required before a tax return preparer can disclose a taxpayer's tax return information to another tax return preparer located outside of the United States.

(4) Proposed § 301.7216–2(q) amends current § 301.7216–2(n), regarding disclosures to report the commission of a crime, by clarifying that penalties for disclosure shall not apply to disclosures necessary to report a crime, nor to any disclosures necessary for the investigation and prosecution of the crime.

3. Proposed § 301.7216–3: Disclosures and Uses Authorized by Taxpayer Consent

Significant revisions are proposed under § 301.7216–3 to address a number of issues concerning the application of these rules in the context of electronic return preparation and filing. The Treasury Department and the IRS propose these amendments to protect taxpayers' tax return information, and to ensure that taxpayers are fully informed when providing consent to disclose or use tax return information.

A. Restrictions Regarding the Offering of Certain Services

The current regulations restrict use of tax return information for the solicitation of services or facilities in matters not related to the IRS to those ''currently offered'' by the tax return preparer or members of the tax return preparer's ''affiliated group,'' within the meaning of section 1504. Because taxpayers must consent to any use or disclosure connected with the solicitation, taxpayer privacy interests are adequately protected regardless of whether a service is currently offered or whether a business offering a service to the taxpayer is a member of a tax return preparer's affiliated group. The currently-offered and affiliated-group rules restrict the ability of taxpayers to control and direct the use of their own tax return information as they see fit. The proposed regulations adopt an approach that ensures taxpayers are provided with a meaningful opportunity to consent to the use and disclosure of their tax return information. Accordingly, the proposed rules revoke the affiliated-group and currently-offered restrictions.

The current regulations do not place limits on tax return preparers' ability to obtain consents to use tax return information to solicit business in matters related to the IRS. The proposed regulations remove the distinction between matters related to the IRS and matters not related to the IRS, and thereby make uniform the requirements regarding consents to use tax return information to solicit business.

B. Form of Consent

The proposed regulations provide that the IRS may provide guidance, by revenue procedure, on the form and content of a taxpayer's consent. The

proposed regulations also allow a taxpayer to use a single document to consent to multiple uses of their tax return information, or use a single document to consent to multiple disclosures of their tax return information, provided certain requirements are met. Although the proposed regulations permit a single document to authorize multiple uses or multiple disclosures, the taxpayer must affirm separately each use or disclosure within the single document. In addition, because the Treasury Department and the IRS believe taxpayers should be alerted to the significant difference between consenting to disclosures to third parties and consenting to uses of tax return information by their tax return preparers, the proposed regulations provide that a single document cannot authorize both uses and disclosures; rather, one document must authorize uses and another separate document must authorize disclosures.

Proposed Effective Date

These regulations are proposed to apply on the date that is 30 days after the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Public Hearing

Before these regulations are adopted as final regulations, consideration will be given to any written comments and electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the following: Whether it is necessary to have an exception to section 7216 for disclosures made to contractors as provided in proposed § 301.7216–2(d)(2), and, if so, how should the regulations protect the information from being used or disclosed by the contractors; and what should constitute an electronic signature on electronic consents. In addition, the IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing is scheduled for April 4, 2006, at 10 a.m., and will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by March 8, 2006, and submit an outline of the topics to be discussed and the time to be devoted to each topic by March 14, 2006. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the regulations are Brinton T. Warren, Bridget E. Tombul, and Dillon Taylor of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7216–0 is added to read as follows:

§ 301.7216–0 Table of contents.

This section lists captions contained in §§ 301.7216–1 through 301.7216–3.

§ 301.7216–1 Penalty for disclosure or use of tax return information.

(a) In general.
(b) Definitions.
(c) Gramm-Leach-Bliley Act.
(d) Effective date.

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

(a) Disclosure pursuant to other provisions of Internal Revenue Code.
(b) Disclosure to facilitate electronic tax administration.
(c) Disclosures or uses for preparation of a taxpayer's return.
(d) Disclosures to other tax return preparers.
(e) Disclosure or use of information in the case of related taxpayers.
(f) Disclosure pursuant to an order of a court, or an administrative order, a demand, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional ethics board, or the Public Company Accounting Oversight Board.
(g) Disclosure for use in Treasury investigations or court proceedings.
(h) Certain disclosures by attorneys and accountants.
(i) Corporate fiduciaries.
(j) Disclosure to taxpayer's fiduciary.
(k) Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.
(l) Payment of tax preparation services.
(m) Retention of records.
(n) Lists for solicitation of tax return business.
(o) Producing statistical information in connection with tax return preparation business.
(p) Disclosure or use of information for quality or peer reviews.
(q) Disclosure to report the commission of a crime.
(r) Disclosure of tax return information due to a tax return preparer's incapacity or death.
(s) Effective date.

§ 301.7216–3 Disclosure or use permitted only with the taxpayer's consent.

(a) In general.
(b) Timing requirements and limitations.
(c) Special rules.
(d) Permissible disclosures to third parties at the request of the taxpayer.
(e) Effective date.

Par. 3. Section 301.7216–1 is revised to read as follows:

§ 301.7216–1 Penalty for disclosure or use of tax return information.

(a) *In general.* Section 7216(a) prescribes a criminal penalty for tax return preparers who knowingly or recklessly disclose or use tax return information for a purpose other than preparing a tax return. A violation of section 7216 is a misdemeanor, with a maximum penalty of up to one year imprisonment or a fine of not more than $1,000, or both, together with the costs of prosecution. Section 7216(b) establishes exceptions to the general rule in section 7216(a) prohibiting disclosure and use. Section 7216(b) also authorizes the Secretary to promulgate regulations prescribing additional permitted disclosures and uses. Section 6713(a) prescribes a related civil penalty for disclosures and uses that constitute a violation of section 7216. The penalty for violating section 6713 is $250 for each disclosure and use, not to exceed a total of $10,000 for a calendar year. Section 6713(b) provides that the exceptions in section 7216(b) also apply to section 6713. Under section 7216(b), the provisions of section 7216(a) will not apply to any disclosure or use permitted under regulations prescribed by the Secretary.

(b) *Definitions.* For purposes of section 7216 and §§ 301.7216–1 through 301.7216–3:

(1) *Tax return.* The term *tax return* means any return (or amended return) of income tax imposed by chapter 1 of the Internal Revenue Code.

(2) *Tax return preparer*—(i) *In general.* The term *tax return preparer* means:

(A) Any person who is engaged in the business of preparing or assisting in preparing tax returns;

(B) Any person who is engaged in the business of providing auxiliary services in connection with the preparation of tax returns, including a person who develops software that is used to prepare or file a tax return and any Authorized IRS e-file Provider;

(C) Any person who is otherwise compensated for preparing, or assisting in preparing, a tax return for any other person; or

(D) Any individual who, as part of their duties of employment with any person described in paragraph (b)(2)(i)(A), (B), or (C) of this section performs services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, a tax return.

(ii) *Business of preparing returns.* A person is engaged in the business of preparing tax returns as described in paragraph (b)(2)(i)(A) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or taxpayers as a person who prepares tax returns or assists in preparing tax returns, whether or not tax return preparation is the person's sole business activity and whether or not the person charges a fee for tax return preparation services.

(iii) *Providing auxiliary services.* A person is engaged in the business of providing auxiliary services in connection with the preparation of tax returns as described in paragraph (b)(2)(i)(B) of this section if, in the course of the person's business, the person holds himself out to tax return preparers or to taxpayers as a person who performs auxiliary services, whether or not providing the auxiliary services is the person's sole business activity and whether or not the person charges a fee for the auxiliary services. Likewise, a person is engaged in the business of providing auxiliary services if, in the course of the person's business, the person receives a taxpayer's tax return information from another tax return preparer pursuant to the provisions of § 301.7216–2(d)(2).

(iv) *Otherwise compensated.* A tax return preparer described in paragraph (b)(2)(i)(C) of this section includes any person who—

(A) Is compensated for preparing a tax return for another person, but not in the course of a business; or

(B) Is compensated for helping, on a casual basis, a relative, friend, or other acquaintance to prepare their tax return.

(v) *Exclusions.* A person is not a tax return preparer merely because he leases office space to a tax return preparer, furnishes credit to a taxpayer whose tax return is prepared by a tax return preparer, furnishes information to a tax return preparer at the taxpayer's request, furnishes access (free or otherwise) to a separate person's tax return preparation Web site through a hyperlink on his own Web site, or otherwise performs some service that only incidentally relates to the preparation of tax returns.

(vi) *Application of section 7701(a)(36).* If a person is an income tax return preparer for purposes of section 7701(a)(36), the person is subject to the provisions of section 7216 and is a tax return preparer for purposes of §§ 301.7216–1 through 301.7216–3. The fact that a person is not an income tax return preparer for purposes of section 7701(a)(36), however, is not determinative of whether the person is a tax return preparer for purposes of section 7216(a) and §§ 301.7216–1 through 301.7216–3.

(vii) *Examples.* The application of § 301.7216–1(b)(2) may be illustrated by the following examples:

Example 1. Bank B is a tax return preparer within the meaning of paragraph (b)(2)(i)(A) of this section, and an Authorized IRS e-file Provider. B employs one individual, Q, to solicit the necessary tax return information for the preparation of a tax return; another individual, R, to prepare the return on the basis of the information that is furnished; a secretary, S, who types the information on the returns into a computer; and an administrative assistant, T, who uses a computer to file electronic versions of the tax returns. Under these circumstances, only R is an income tax return preparer for purposes of section 7701(a)(36), but all four employees are tax return preparers for purposes of section 7216, as provided in paragraph (b) of this section.

Example 2. Tax return preparer P contracts with department store D to rent space in D's store. D advertises that taxpayers who use P's services may charge the cost of having their tax return prepared to their charge account with D. Under these circumstances, D is not a tax return preparer because it provides space, credit, and services only incidentally related to the preparation of tax returns.

(3) *Tax return information*—(i) *In general.* The term *tax return information* means any information, including, but not limited to, a taxpayer's name, address, or identifying number, which is furnished in any form or manner for, or in connection with, the preparation of a tax return of the taxpayer. This information includes information that the taxpayer furnishes to a tax return preparer and information furnished the tax return preparer by a third party. Tax return information also includes information the tax return preparer derives or generates from tax return information in connection with the preparation of a taxpayer's return.

(A) Tax return information can be provided directly by the taxpayer or by another person. Likewise, tax return information includes information received by the tax return preparer from the IRS in connection with the processing of such return, including an acknowledgment of acceptance or notice of rejection of an electronically filed return.

(B) Tax return information includes statistical compilations of tax return information, even in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. See § 301.7216–2(o) for limited use of tax return information to make statistical compilations without taxpayer consent and to use the statistical compilations for limited purposes.

(C) Tax return information does not include information identical to any tax return information that has been furnished to a tax return preparer if the identical information was obtained otherwise than in connection with the preparation of a tax return. Information maintained in a form that is associated with the tax return preparation, however, becomes tax return information, regardless of how the information was initially obtained.

(D) Information is considered ''in connection with tax return preparation,'' and therefore tax return information, if the taxpayer would not have furnished the information to the tax return preparer but for his intention to engage, or his engagement of, the tax return preparer to prepare his tax return.

(ii) *Examples.* The application of this paragraph (b)(3) may be illustrated by the following examples:

Example 1. Taxpayer A purchases computer software designed to assist with the preparation and filing of her income tax return. When A loads the software onto her computer, it prompts her to register her purchase of the software. As part of the registration process, the software provider states that it will provide registrants with any updates to the software. In this situation, the software provider is a tax return preparer under paragraph (b)(2)(i)(B) of this section and the information that A provides to register her purchase is tax return information because she is providing it in connection with the preparation of a tax return.

Example 2. Corporation A is a brokerage firm that maintains a website through which its clients may access their accounts, trade stocks, and generally conduct a variety of financial activities. Through its Web site, A offers its clients free access to its own tax preparation software. Taxpayer B is a client of A and has furnished A his name, address, and other information when registering for use of A's Web site to use A's brokerage services. In addition, A has a record of B's brokerage account activity, including sales of stock, dividends paid, and IRA contributions made. B uses A's tax preparation software to prepare his tax return. The software populates some fields on B's return on the basis of information A already maintains in its databases. A is a tax return preparer within the meaning of paragraph (b)(2)(i)(B) of this section because it has prepared and provided software for use in preparing tax returns. The information in A's databases that the software accesses to populate B's return, *i.e.*, the registration information and brokerage account activity, is not tax return information because A did not receive that information in connection with the preparation of a tax return. Once A uses the information to populate the return, however, the information associated with the return becomes tax return information. If A retains the information in a form in which A can identify that the information was used in connection with the preparation of a return, the information in that form is tax return information. If, however, A retains the information in a database in which A cannot identify whether the information was used in connection with the preparation of a return, then that information is not tax return information.

(4) *Use*—(i) *In general.* Use of tax return information includes any circumstance in which a tax return preparer refers to, or relies upon, tax return information as the basis to take or permit an action.

(ii) *Example.* The application of this paragraph (b)(4) may be illustrated by the following example:

Example. Preparer G is a tax return preparer as defined by paragraph (b)(2)(i)(A) of this section. If G determines, upon preparing a return, that a refund is due to the taxpayer, G will ask whether the taxpayer desires a refund anticipation loan, *i.e.*, a loan that the taxpayer repays from the taxpayer's refund proceeds. G does not ask about refund anticipation loans in cases in which the taxpayer is not due a refund. G is using tax return information when it asks whether a taxpayer is interested in obtaining a refund anticipation loan because G is basing the inquiry on the taxpayer's being entitled to a refund.

(5) *Disclosure.* The term *disclosure* means the act of making tax return information known to any person in any manner whatever. To the extent that a taxpayer's use of a hyperlink results in the transmission of tax return information, such transmission of tax return information is a disclosure by the tax return preparer subject to penalty under section 7216 if not authorized by regulation.

(6) *Hyperlink.* For purposes of section 7216, a hyperlink is the device used to transfer an individual using tax preparation software from a tax return preparer's Web page to a Web page operated by another person without the individual having to separately enter the web address of the destination page.

(7) *Request for consent.* A request for consent includes any effort by a tax return preparer to obtain the taxpayer's consent to use or disclose the taxpayer's tax return information. The act of supplying a taxpayer with a paper or electronic form that meets the requirements of a revenue procedure published pursuant to § 301.7216–3(a) is a request for a consent. When a tax return preparer requests a taxpayer's consent, any associated efforts of the tax return preparer, including, but not limited to, verbal or written explanations of the form, are part of the request for consent.

(c) *Gramm-Leach-Bliley Act.* Any applicable requirements of the Gramm-Leach-Bliley Act, Public Law 106–102 (113 Stat. 1338), do not supersede, alter, or affect the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3. Similarly, the requirements of section 7216 and §§ 301.7216–1 through 301.7216–3 do not nullify any requirements or restrictions of the Gramm-Leach-Bliley Act, which are in addition to the requirements or restrictions of section 7216 and §§ 301.7216–1 through 301.7216–3.

(d) *Effective date.* This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Par. 4. Section 301.7216–2 is revised to read as follows:

§ 301.7216–2 Permissible disclosures or uses without consent of the taxpayer.

(a) *Disclosure pursuant to other provisions of Internal Revenue Code.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure of tax return information if the disclosure is made pursuant to any other provision of the Internal Revenue Code or the regulations thereunder. Thus, for example, these provisions will not apply to—

(1) A disclosure under section 7269 to an officer or employee of the IRS of information concerning the estate of a decedent; or

(2) A disclosure under section 7602 (through formal or informal procedures) to an officer or employee of the IRS of books, papers, records, or other tax return information that may be relevant to any person's income tax liability.

(b) *Disclosures to facilitate electronic tax administration.* Tax return preparers may disclose to the IRS any tax return information the IRS requests to assist in the administration of electronic filing programs. The information can include tax return information requested in the course of investigating Authorized IRS e-file Providers for compliance with electronic filing rules or tax return information that the IRS determines would assist in evaluating the effectiveness of electronic filing programs.

(c) *Disclosures or uses for preparation of a taxpayer's return—(1) Tax return preparers located within the same firm in the United States.* If a taxpayer furnishes tax return information to a tax return preparer located within the United States, including any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use the tax return information, or disclose the tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing

auxiliary services in connection with the preparation of, the taxpayer's tax return. If an officer, employee, or member to whom the tax return information is to be disclosed is located outside of the United States or any territory or possession of the United States, the taxpayer's consent under § 301.7216–3 prior to any disclosure is required.

(2) *Furnishing tax return information to tax return preparers located outside the United States.* If a taxpayer initially furnishes tax return information to a tax return preparer located outside of the United States or any territory or possession of the United States, an officer, employee, or member of a tax return preparer may use tax return information, or disclose any tax return information to another officer, employee, or member of the same tax return preparer, for the purpose of performing services that assist in the preparation of, or assist in providing auxiliary services in connection with the preparation of, the tax return of a taxpayer by or for whom the information was furnished without the taxpayer's consent under § 301.7216–3.

(3) *Examples.* The following examples illustrate this paragraph (c):

Example 1. T is a client of Firm, which is a tax return preparer. E, an employee at Firm's State A office, receives tax return information from T for use in preparing T's income tax return. E discloses the tax return information to P, an employee in Firm's State B office; P uses the tax return information to process T's income tax return. Firm is not required to receive T's consent under § 301.7216–3 prior to E's disclosure of T's tax return information to P, because the tax return information is disclosed to an employee employed by the same tax return preparer located within the United States.

Example 2. Same facts as Example 1 except T's tax return information is disclosed to FE who is located in Firm's Country F office. FE uses the tax return information to process T's income tax return. After processing, FE returns the processed tax return information to E in Firm's State A office. Because FE is outside of the United States, Firm is required to obtain T's consent under § 301.7216–3 prior to E's disclosure of T's tax return information to FE.

Example 3. T, Firm's client, is temporarily located in Country F. She initially furnishes her tax return information to employee FE in Firm's Country F office for the purpose of having Firm prepare her U.S. income tax return. FE makes the substantive determinations concerning T's tax liability and forwards T's tax return information to FP, an employee in Firm's Country P office, for the purpose of processing T's tax return information. FP processes the return information and forwards it to Partner at Firm's State A office in the United States for review and delivery to T. Because T initially furnished the tax return information to a tax return preparer outside of the United States, T's prior consent for use or disclosure under § 301.7216–3 was not required. An officer, employee, or member of Firm in the United States may use T's tax return information or disclose the tax return information to another officer, employee, or member of Firm without T's prior consent under § 301.7216–3 as long as any use or disclosure of T's tax return information is within the United States. Firm is required to receive T's consent under § 301.7216–3 prior to any subsequent disclosure of T's tax return information to a tax return preparer located outside of the United States.

(d) *Disclosures to other tax return preparers—(1) Preparer-to-preparer disclosures.* Except as limited in paragraph (d)(2) of this section, an officer, employee, or member of a tax return preparer may disclose tax return information of a taxpayer to another tax return preparer located in the United States (including any territory or possession of the United States) for the purpose of preparing, or assisting in preparing a tax return, or obtaining or providing auxiliary services in connection with the preparation of any tax return so long as the services provided are not substantive determinations or advice affecting a taxpayer's reported tax liability. The authorized disclosures permitted under this subparagraph include one tax return preparer disclosing tax return information to another tax return preparer for the purpose of having the second tax return preparer transfer that information to, and compute the tax liability on, a tax return of the taxpayer by means of electronic, mechanical, or other form of tax return processing service. The authorized disclosures permitted under this subparagraph also include disclosures by a tax return preparer to an Authorized IRS e-file Provider for the purpose of electronically filing the return with the IRS. Authorized disclosures also include disclosures by a tax return preparer to a second tax return preparer for the purpose of making information concerning the return available to the taxpayer. This would include, for example, whether the return has been accepted or rejected by the IRS, or the status of the taxpayer's refund. Except as provided in paragraph (c) of this section, a tax return preparer may not disclose tax return information to another tax return preparer for the purpose of the second tax return preparer providing substantive determinations without first receiving the taxpayer's consent in accordance with the rules under § 301.7216–3.

(2) *Disclosures to contractors.* A tax return preparer may disclose tax return information to a person under contract with the tax return preparer in connection with the programming, maintenance, repair, testing, or procurement of equipment or software used for purposes of tax return preparation only to the extent necessary for the person to provide the contracted services, and only if the tax return preparer ensures that all individuals who are to receive disclosures of tax return information receive a written notice that informs them of the applicability of sections 6713 and 7216 to them and describes the requirements and penalties of sections 6713 and 7216. Contractors receiving tax return information pursuant to this subsection are tax return preparers under section 7216 because they are performing auxiliary services in connection with tax return preparation. See § 301.7216–1(b)(2)(i)(B) and (D).

(3) *Examples.* The following examples illustrate this paragraph (d):

Example 1. E, an employee at Firm's State A office, receives tax return information from T for Firm's use in preparing T's income tax return. E makes substantive determinations and forwards the tax return information to P, an employee at Processor; Processor is located in State B. P places the tax return information on the income tax return and furnishes the finished product to E. E is not required to receive T's prior consent under § 301.7216–3 before disclosing T's tax return information to P, because Processor's services are not substantive determinations and the tax return information remained in the United States at Processor's State B office during the entire course of the tax return preparation process.

Example 2. Firm, a tax return preparer, offers income tax return preparation services. Firm's contract with its software provider, Contractor, requires Firm to periodically randomly select certain taxpayers' tax return information solely for the purpose of testing the reliability of the software sold to Firm. Under its agreement with Contractor, Firm discloses tax return information to Contractor's employee, C, who services Firm's contract without providing Contractor or C with a written notice that describes the requirements of and penalties under sections 7216 and 6713. C uses the tax return information solely for quality assurance purposes. Firm's disclosure of tax return information to C was an impermissible disclosure, because Firm failed to ensure that C received a written notice that describes the requirements and penalties of sections 7216 and 6713.

Example 3. E, an employee of Firm in State A in the United States, receives tax return information from T for use in preparing T's income tax return. After E enters T's tax return information into Firms' computer, that information is stored on a computer server that is physically located in State A. Firm contracts with Contractor, located in Country F, to prepare its clients' tax returns. FE, an employee of Contractor, uses a computer in Country F and inputs a password to view T's

income tax information stored on the computer server in State A to prepare T's tax return. A computer program permits FE to view T's tax return information, but prohibits FE from downloading or printing out T's tax return information from the computer server. Because Firm is disclosing T's tax return information outside of the United States, Firm is required to obtain T's consent under § 301.7216–3 prior to the disclosure to FE.

(e) *Disclosure or use of information in the case of related taxpayers.* (1) In preparing a tax return of a second taxpayer, a tax return preparer may use, and may disclose to the second taxpayer, in the form in which it appears on the return, any tax return information that the tax return preparer obtained from a first taxpayer if—

(i) The second taxpayer is related to the first taxpayer within the meaning of paragraph (e)(2) of this section;

(ii) The first taxpayer's tax interest in the information is not adverse to the second taxpayer's tax interest in the information; and

(iii) The first taxpayer has not expressly prohibited the disclosure or use.

(2) For purposes of paragraph (e)(1)(i) of this section, a taxpayer is related to another taxpayer if they have any one of the following relationships: husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

(3) See § 301.7216–3 for disclosure or use of tax return information of the taxpayer in preparing the tax return of a second taxpayer when the requirements of this paragraph are not satisfied.

(f) *Disclosure pursuant to an order of a court, or an administrative order, demand, summons or subpoena which is issued in the performance of its duties by a Federal or State agency, the United States Congress, a professional ethics board, or the Public Company Accounting Oversight Board.* The provisions of section 7216(a) and § 301.7216–1 will not apply to any disclosure of tax return information if the disclosure is made pursuant to any one of the following documents:

(1) The order of any court of record, Federal, State, or local.

(2) A subpoena issued by a grand jury, Federal or State.

(3) A subpoena issued by the United States Congress.

(4) An administrative order, demand, summons or subpoena that is issued in the performance of its duties by—

(i) Any Federal agency as defined in 5 U.S.C. 551(1) and 5 U.S.C. 552(f), or

(ii) A State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.

(5) A written request from a professional ethics board investigating the ethical conduct of the tax return preparer.

(6) A formal demand from the Public Company Accounting Oversight Board to registered public accounting firms in connection with an inspection under section 104 of the Sarbanes-Oxley Act of 2002 (Act), 15 U.S.C. 7214, or an investigation under section 105 of the Act.

(g) *Disclosure for use in Treasury investigations or court proceedings.* A tax return preparer may disclose tax return information—

(1) To his attorney, or to an employee of the Treasury Department, for use in connection with any investigation of the tax return preparer (including investigations relating to the tax return preparer in its capacity as a practitioner) conducted by the IRS or the Treasury Department; or

(2) To his attorney, or to any officer of a court, for use in connection with proceedings involving the tax return preparer (including proceedings involving the tax return preparer in its capacity as a practitioner), or the return preparer's client, before the court or before any grand jury that may be convened by the court.

(h) *Certain disclosures by attorneys and accountants.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure of tax return information permitted by this paragraph (h).

(1)(i) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may use the taxpayer's tax return information, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm, consistent with applicable legal and ethical responsibilities, who may use the tax return information for the purpose of providing other legal or accounting services to the taxpayer. As an example, a lawyer who prepares a tax return for a taxpayer may use the tax return information of the taxpayer for, or in connection with, rendering legal services, including estate planning or administration, or preparation of trial briefs or trust instruments, for the taxpayer or the estate of the taxpayer. In addition, the lawyer who prepared the tax return may disclose the tax return information to another officer, employee or member of the same firm for the purpose of providing other legal services to the taxpayer. As another example, an accountant who prepares a tax return for a taxpayer may use the tax return information, or disclose it to another officer, employee or member of the firm, for use in connection with the preparation of books and records, working papers, or accounting statements or reports for the taxpayer. In the normal course of rendering the legal or accounting services to the taxpayer, the attorney or accountant may make the tax return information available to third parties, including stockholders, management, suppliers, or lenders, consistent with the applicable legal and ethical responsibilities, unless the taxpayer directs otherwise. For rules regarding disclosing outside of the United States, see § 301.7216–2(c) and (d).

(ii) A tax return preparer's law or accounting firm does not include any related or affiliated firms. For example, if law firm A is affiliated with law firm B, officers, employees and members of law firm A must receive a taxpayer's consent under § 301.7216–3 before disclosing the taxpayer's tax return information to an officer, employee or member of law firm B.

(2) A tax return preparer who is lawfully engaged in the practice of law or accountancy and prepares a tax return for a taxpayer may, consistent with the applicable legal and ethical responsibilities, take the tax return information into account, and may act upon it, in the course of performing legal or accounting services for a client other than the taxpayer, or disclose the information to another officer, employee or member of the tax return preparer's law or accounting firm to enable that other officer, employee or member to take the information into account, and act upon it, in the course of performing legal or accounting services for a client other than the taxpayer. This is permissible when the information is, or may be, relevant to the subject matter of the legal or accounting services for the other client, and consideration of the information by those performing the services is necessary for the proper performance of the services. In no event, however, may the tax return information be disclosed to a person who is not an officer, employee or member of the law or accounting firm, unless the disclosure is exempt from the application of section 7216(a) and § 301.7216–1 by reason of another provision of §§ 301.7216–2 or 301.7216–3.

(3) The application of this paragraph may be illustrated by the following examples:

Example 1. A, a member of an accounting firm, renders an opinion on a financial statement of M Corporation that is part of a registration statement filed with the Securities and Exchange Commission. After the registration statement is filed, but before its effective date, B, a member of the same accounting firm, prepares an income tax return for N Corporation. In the course of preparing N's income tax return, B discovers that N does business with M and concludes that the information given by N should be considered by A to determine whether the financial statement opined on by A contains an untrue statement of material fact or omits a material fact required to keep the statement from being misleading. B discloses to A the tax return information of N for this purpose. A determines that there is an omission of material fact and that an amended statement should be filed. A so advises M and the Securities and Exchange Commission. A explains that the omission was revealed as a result of confidential information that came to A's attention after the statement was filed, but A does not disclose the identity of the taxpayer or the tax return information itself. Section 7216(a) and § 301.7216–1 do not apply to B's disclosure of N's tax return information to A and A's use of the information in advising M and the Securities and Exchange Commission of the necessity for filing an amended statement. Section 7216(a) and § 301.7216–1 would apply to a disclosure of N's tax return information to M or to the Securities and Exchange Commission unless the disclosure is exempt from the application of section 7216(a) and § 301.7216–1 by reason of another provision of either this section or § 301.7216–3.

Example 2. A, a member of an accounting firm, is conducting an audit of M Corporation, and B, a member of the same accounting firm, prepares an income tax return for D, an officer of M. In the course of preparing the return, B obtains information from D indicating that D, pursuant to an arrangement with a supplier doing business with M, has been receiving from the supplier a percentage of the amounts that the supplier invoices to M. B discloses this information to A who, acting upon it, searches in the course of the audit for indications of a kickback scheme. As a result, A discovers information from audit sources that independently indicate the existence of a kickback scheme. Without revealing the tax return information A has received from B, A brings to the attention of officers of M the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216–1 do not apply to B's disclosure of D's tax return information to A, A's use of D's information in the course of the audit, and A's disclosure to M of the audit information indicating the existence of the kickback scheme. Section 7216(a) and § 301.7216–1 would apply to a disclosure to M, or to any other person not an employee or member of the accounting firm, of D's tax return information furnished to B.

(i) *Corporate fiduciaries.* A trust company, trust department of a bank, or other corporate fiduciary that prepares a tax return for a taxpayer for whom it renders fiduciary, investment, or other custodial or management services may, unless the taxpayer directs otherwise—

(1) Disclose or use the taxpayer's tax return information in the ordinary course of rendering such services to or for the taxpayer; or

(2) Make the information available to the taxpayer's attorney, accountant, or investment advisor.

(j) *Disclosure to taxpayer's fiduciary.* If, after furnishing tax return information to a tax return preparer, the taxpayer dies or becomes incompetent, insolvent, or bankrupt, or the taxpayer's assets are placed in conservatorship or receivership, the tax return preparer may disclose the information to the duly appointed fiduciary of the taxpayer or his estate, or to the duly authorized agent of the fiduciary.

(k) *Disclosure or use of information in preparation or audit of State or local tax returns or assisting a taxpayer with foreign country tax obligations.* The provisions of paragraphs (c) and (d) of this section shall apply to the disclosure by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216–1 shall not apply to the use by any tax return preparer of any tax return information in the preparation of, or in connection with the preparation of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States, or of a country other than the United States. The provisions of section 7216(a) and § 301.7216–1 shall not apply to the disclosure or use by any tax return preparer of any tax return information in the audit of, or in connection with the audit of, any tax return of the taxpayer under the law of any State or political subdivision thereof, of the District of Columbia, of any territory or possession of the United States.

(l) *Payment for tax preparation services.* A tax return preparer may use and disclose, without the taxpayer's written consent, tax return information that the taxpayer provides to the tax return preparer to pay for tax preparation services to the extent necessary to process the payment. For example, if the taxpayer gives the tax return preparer a credit card to pay for tax preparation services, the tax return preparer may disclose the taxpayer's name, credit card number, credit card expiration date, and amount due for tax preparation services to the credit card company, as necessary, to process the payment. Any tax return information that is not relevant to the payment may not be used or disclosed by the tax return preparer without the taxpayer's prior written consent, unless otherwise permitted under another provision of this section.

(m) *Retention of records.* A tax return preparer may retain tax return information of a taxpayer, including copies of tax returns, in paper or electronic format, prepared on the basis of the tax return information, and may use the information in connection with the preparation of other tax returns of the taxpayer or in connection with an examination by the Internal Revenue Service of any tax return or subsequent tax litigation relating to the tax return. The provisions of paragraph (n) of this section regarding the transfer of a taxpayer list also apply to the transfer of any records and related papers to which this paragraph applies.

(n) *Lists for solicitation of tax return business.* A tax return preparer may compile and maintain a separate list containing solely the names, addresses, e-mail addresses, and phone numbers of taxpayers whose tax returns the tax return preparer has prepared or processed. This list may be used by the compiler solely to contact the taxpayers on the list for the purpose of offering tax information or additional tax return preparation services to such taxpayers. The compiler of the list may not transfer the taxpayer list, or any part thereof, to any other person unless the transfer takes place in conjunction with the sale or other disposition of the compiler's tax return preparation business. A person who acquires a taxpayer list, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the list. The term *list*, as used in this paragraph, includes any record or system whereby the names and addresses of taxpayers are retained. The provisions of this paragraph also apply to the transfer of any records and related papers to which this paragraph (n) applies.

(o) *Producing statistical information in connection with tax return preparation business.* A tax return preparer may use, for the limited purpose specified in this paragraph, tax return information to produce a statistical compilation of data described in § 301.7216–1(b)(3)(i)(B). The purpose and use of the statistical compilation must relate directly to the internal

management or support of the tax return preparer's tax return preparation business. The tax return preparer may not disclose or use the tax return information in connection with, or support of, businesses other than tax return preparation. The compiler of the statistical compilation may not transfer the compilation, or any part thereof, to any other person unless the transfer takes place upon the sale or other disposition of the tax return preparation business of the compiler. A person who acquires a compilation, or a part thereof, in conjunction with a sale or other disposition of a tax return preparation business is subject to the provisions of this paragraph with respect to the compilation as if the acquiring person had compiled it.

(p) *Disclosure or use of information for quality or peer reviews.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to any disclosure for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Revenue Service. See Department of the Treasury Circular 230, 31 CFR part 10. Disclosure of tax return information is also authorized to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (p), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel. Any person (including administrative and support personnel) receiving tax return information in connection with a quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(q) *Disclosure to report the commission of a crime.* The provisions of section 7216(a) and § 301.7216–1 shall not apply to the disclosure of any tax return information to the proper Federal, State, or local official in order, and to the extent necessary, to inform the official of activities that may constitute, or may have constituted, a violation of any criminal law or to assist the official in investigating or prosecuting a violation of criminal law. A disclosure made in the bona fide but mistaken belief that the activities constituted a violation of criminal law is not subject to section 7216(a) and § 301.7216–1.

(r) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased tax return preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (r) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(s) *Effective date.* This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Par. 5. Section 301.7216–3 is revised to read as follows:

§ 301.7216–3 Disclosure or use permitted only with the taxpayer's consent.

(a) *In general*—(1) *Taxpayer consent.* Unless section 7216 or § 301.7216–2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a consent from the taxpayer, as described in this section. The consent must be knowing and voluntary. As an example, a tax return preparer may not condition its provision of preparation services upon the taxpayer's consenting to a use of the taxpayer's tax return information. Except as provided in paragraph (a)(2) of this section, conditioning the provision of services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

(2) *Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer.* A tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

(3) *Guidance describing the form and contents of taxpayer consents.* The Commissioner may issue guidance, by revenue procedure, describing the form and content of taxpayer consents authorized under this section.

(b) *Timing requirements and limitations*—(1) *No retroactive consent.* A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

(2) *Time limitations on requesting consent.* A tax return preparer may not request a taxpayer's consent to use or disclose tax return information after the tax return preparer provides a completed tax return to the taxpayer for signature.

(3) *No requests for consent after an unsuccessful request.* With regard to tax return information for each income tax return that a tax return preparer prepares, if a taxpayer declines a request for consent to the use or disclosure of tax return information, the tax return preparer may not make another request to obtain consent for a purpose substantially similar to that of the rejected request.

(4) *Duration of consent.* No consent to the use or disclosure of tax return information may be effective for a period longer than one year from the date the taxpayer signed the consent.

(c) *Special rules*—(1) *Multiple disclosures within a single consent form or multiple uses within a single consent form.* A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple uses or multiple disclosures must specifically and separately identify each use or disclosure.

(2) *Disclosure of entire return.* A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must set forth an explanation of the reasons why a consent authorizing a more limited disclosure of tax return information is

unsatisfactory for the purpose of the consent.

(3) *Copy of consent must be provided to taxpayer*. The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

(d) *Permissible disclosures to third parties at the request of the taxpayer*. A tax return preparer may disclose tax return information to third parties as the taxpayer directs so long as the taxpayer provides a consent to disclose tax return information that satisfies the requirements of this paragraph and as prescribed by the Commissioner by revenue procedure. (See § 601.601(d)(2) of this chapter.)

(e) *Effective date*. This section applies on the date that is 30 days after the final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E5–7018 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–130]

RIN 1625–AA08

Special Local Regulations for Marine Events; Chesapeake Bay

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation during the ''Volvo Ocean Race 2005–2006'', sailboat races to be held on the waters of the Chesapeake Bay in the vicinity east of Gibson Island, Maryland and near the William Preston Lane Jr. Memorial (Chesapeake Bay) Bridge near Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in segments of the Chesapeake Bay during the sailboat races.

DATES: Comments and related material must reach the Coast Guard on or before February 6, 2006.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, Project Manager, Marine Information Specialist, U.S. Coast Guard Sector Baltimore, at (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–130), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During April and May 2006, Ocean Race Chesapeake, Inc. will host the Chesapeake Bay visit of the ''Volvo Ocean Race 2005–2006''. Two sailboat racing events are planned during this period to be conducted on the waters of the Chesapeake Bay in the vicinity of the William Preston Lane Jr. Memorial (Chesapeake Bay) Bridge near Annapolis, Maryland. The first event will be the ''In Port Race'' on April 29, 2006 that will take place on the Chesapeake Bay approximately 5 miles east of Gibson Island, Maryland and about 8 miles north of the Chesapeake Bay Bridge. The second event will be the ''Leg 6 Re-Start'' of the 2005–2006 Volvo Round the World Race, on May 7, 2006 that will take place on the Chesapeake Bay between Thomas Point and Sandy Point, near Annapolis, Maryland.

Both events will consist of approximately eight 70-foot long sailing vessels that will participate in both the ''In Port Race'' and a carefully organized ''Re-Start'' to a highly publicized, international sailing race. The restart will consist of opposing teams that will be maneuvering in a predetermined area within the Chesapeake Channel adjacent to the William P. Lane Jr. Memorial (Chesapeake Bay) Bridge Main Channel Span. A fleet of spectator vessels is anticipated to gather nearby to view the competition for both events. Because of the danger posed by many sailing vessels maneuvering in close proximity of each other during the in port race and at the beginning of the race restart, special local regulations are necessary. For the safety concerns noted and to address the need for vessel control to facilitate a fair and accurate restart, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Chesapeake Bay. The ''In Port Race'' segment of the regulated area will include a square-shaped section of the Chesapeake Bay, four nautical miles long on each side, located approximately 17 nautical miles southeast of Baltimore's Inner Harbor. The center of the race course is approximately five nautical miles east of Gibson Island, Maryland. The duration of the race is expected to be three hours and spectator anchorage areas will be designated. The ''Leg 6 Re-Start'' segment of the regulated area will include a rectangle-shaped area of the Chesapeake Bay, 6 nautical miles long and 1.5 nautical miles wide, located approximately 13 nautical miles east of Annapolis Harbor. The actual starting line for this event lies south of the William P. Lane, Jr. Memorial (Chesapeake Bay) Bridge, Maryland. The duration of the event is expected to be three hours and spectator anchorage areas will be designated. The temporary special local regulations will be

enforced from 10:30 a.m. to 4:30 p.m. on April 29, 2006 for the ''In Port Race,'' and from 9 a.m. to 5 p.m. on May 7, 2006 for the ''Leg 6 Re-Start,'' and will restrict general navigation in the regulated area during the sailboat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed regulation will prevent traffic from transiting a segment of the Chesapeake Bay in the vicinity of the William P. Lane, Jr. Memorial (Chesapeake Bay) Bridge during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit these sections of the Chesapeake Bay during these events.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Although the regulated area will apply to two separate segments of the Chesapeake Bay, traffic may be allowed to pass through the regulated areas with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through a regulated area during an event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Although this regulation prevents traffic from transiting the Chesapeake Channel of the Chesapeake Bay during the Re-Start event, the effect of this regulation will not be significant because of its limited duration. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. From 10:30 a.m. on April 29, 2006 through 5 p.m. on May 7, 2006, add a temporary *§ 100.35–T05–130* to read as follows:

§ 100.35–T05–130 Chesapeake Bay, near Annapolis, MD.

(a) *Regulated area* includes two segments within the waters of the Chesapeake Bay. (1) The first segment for the ''In Port Race'' is a square-shaped area, four nautical miles long on each side, bounded by a line drawn from a position at latitude 39°03′08″ N, longitude 076°21′38″ W, thence easterly to a position at latitude 39°03′08″ N, longitude 076°16′32″ W, thence northerly to a position at latitude 39°07′06″ N, longitude 076°16′32″ W, thence westerly to a position at latitude 39°07′06″ N, longitude 076°21′38″ W, thence southerly to a position at latitude 39°03′08″ N, longitude 076°21′38″ W, the point of origin.

(i) There are three designated spectator areas for the first segment. The first spectator area lies northeast of the mouth of the Magothy River, Maryland and is approximately 3000 yards long and 500 yards wide, bounded by a line drawn from a position at latitude, 39°04′05″ N, longitude 076°20′27″ W, thence northeasterly to a position at latitude 39°04′14″ N, longitude 076°20′12″ W, thence northwesterly to a position at latitude 39°05′23″ N, longitude 076°21′25″ W, thence southwesterly to position at latitude 39°05′13″ N, longitude 076°21′40″ W, thence southeasterly to a position at latitude 39°04′05″ N, longitude 076°20′27″ W, the point of origin.

(ii) The second spectator area lies northwest of the mouth of the Chester River, Maryland and is approximately 2200 yards long and 500 yards wide, bounded by a line drawn from a position at latitude, 39°04′13″ N, longitude 076°17′22″ W, thence northeasterly to a position at latitude 39°05′15″ N, longitude 076°16′32″ W, thence northwesterly to a position at latitude 39°05′23″ N, longitude 076°16′51″ W, thence southwesterly to position at latitude 39°04′28″ N, longitude 076°17′37″ W, thence southeasterly to a position at latitude 39°04′13″ N, longitude 076°17′22″ W, the point of origin.

(iii) The third spectator area lies between Belvidere Shoal and Swan Point Bar, Maryland and is approximately 4800 yards long and 500 yards wide, bounded by a line drawn from a position at latitude, 39°05′30″ N, longitude 076°21′28″ W, thence northeasterly to a position at latitude 39°06′48″ N, longitude 076°19′32″ W, thence easterly to a position at latitude 39°06′48″ N, longitude 076°18′25″ W, thence southeasterly to position at latitude 39°05′28″ N, longitude 076°16′42″ W, thence northeasterly to a position at latitude 39°05′38″ N, longitude 076°16′32″ W, thence northwesterly to a position at latitude 39°07′01″ N, longitude 076°18′13″ W, thence westerly to a position at latitude 39°07′01″ N, longitude 076°19′35″ W, thence southwesterly to position at latitude 39°05′43″ N, longitude 076°21′40″ W, thence southeasterly to a position at latitude 39°05′30″ N, longitude 076°21′28″ W, the point of origin.

(2) The second segment for the ''Leg 6 Re-Start'' is a rectangle-shaped area, approximately six nautical miles long and 1.5 nautical miles wide, bounded by a line drawn from a position at latitude, 38°54′38″ N, longitude 076°26′44″ W, thence easterly to a position at latitude 38°54′11″ N, longitude 076°24′49″ W, thence northerly to a position at latitude 38°59′40″ N, longitude 076°21′42″ W, thence westerly to position at latitude 39°00′05″ N, longitude 076°23′33″ W, thence southerly to a position at latitude 38°54′38″ N, longitude 076°26′44″ W, the point of origin.

(i) There are two designated spectator areas for the second segment. The first spectator area lies east of the mouth of the Severn River, Maryland and is approximately three nautical miles long and 500 yards wide, bounded by a line drawn from a position at latitude, 38°56′32″ N, longitude 076°25′31″ W, thence easterly to a position at latitude 38°56′30″ N, longitude 076°25′13″ W , thence northerly to a position at latitude 38°59′13″ N, longitude 076°23′38″ W, thence westerly to position at latitude 38°59′20″ N, longitude 076°23′55″ W, thence southerly to a position at latitude 38°56′32″ N, longitude 076°25′31″ W, the point of origin.

(ii) The second spectator area lies west of Kent Island, Maryland and is approximately three nautical miles long and 500 yards wide, bounded by a line drawn from a position at latitude, 38°56′17″ N, longitude 076°24′12″ W, thence easterly to a position at latitude 38°56′06″ N, longitude 076°23′53″ W, thence northerly to a position at latitude 38°58′50″ N, longitude 076°22′17″ W, thence westerly to position at latitude 38°58′57″ N, longitude 076°22′37″ W, thence southerly to a position at latitude 38°56′17″ N, longitude 076°24′12″ W, the point of origin.

(3) All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means any commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) Official Patrol means any person or vessel authorized by the Coast Guard Patrol Commander or approved by Commander, Coast Guard Sector Baltimore.

(3) Participant includes all vessels participating in the Volvo Ocean Race under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for the Official Patrol, participants, and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) Any person in the regulated area must stop immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(4) All persons and vessels shall comply with the instructions of the Official Patrol.

(5) When authorized to transit within the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course and near other persons and vessels in the designated spectator areas.

(d) *Enforcement period.* This section will be enforced for the ''In Port Race'' from 10:30 a.m. to 4:30 p.m. on April 29, 2006, and from 9 a.m. to 5 p.m. on May 7, 2006 for the ''Leg 6 Re-Start''. If the ''In Port Race'' is postponed due to inclement weather, then the temporary special local regulations will be enforced at the same time period during one of the next four days, April 30, 2006 through May 3, 2006.

Dated: November 27, 2005.

Larry L. Hereth,

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

[FR Doc. 05–23753 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–102]

RIN 1625–AA09

Drawbridge Operation Regulations; Housatonic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the drawbridge operating regulations governing the operation of the U.S. 1 Bridge, mile 3.5, across the Housatonic River at Stratford, Connecticut. This notice of proposed rulemaking would allow the bridge owner to open only one of the two moveable spans for bridge openings at various times from January 2, 2006 through September 1, 2006, to facilitate bridge rehabilitation. Full bridge openings would be available at various times during the above time period after a seven-day notice is given by calling the number posted at the bridge.

DATES: Comments must reach the Coast Guard on or before December 23, 2005.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for publishing an NPRM with a shortened comment period of 15 days and under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The shortened comment period and making this rule effective in less than 30 days after publication in the **Federal Register** will allow this rule to become effective in time for the January 2, 2006, project start date. This action is necessary because the bridge owner did not become fully aware of the contractor's need to temporarily change the bridge regulations to perform the work until recently.

The Coast Guard believes a shortened comment period is reasonable because the bridge rehabilitation construction scheduled to begin on January 2, 2006, is necessary, vital, work that must to be performed as soon as possible in order to assure the safe continued reliable operation of the U.S. 1 Bridge.

Any delay in making this rule effective would not be in the best interest of public safety and the marine interests that use the Housatonic River because failure to start the rehabilitation repairs on time could result in an unscheduled bridge operation failure.

There is only one commercial facility operator that normally requires the bridge to open; however, that facility will not be in service during the time period this rule will be in effect. The recreational vessels that normally use this waterway are small enough in size that they can either pass under the spans without a bridge opening or safely pass through the bridge with a single span opening.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–05–102), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The U.S. 1 Bridge, at mile 3.5, across the Housatonic River has a vertical clearance of 32 feet at mean high water and 37 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR § 17.207(a).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary change to the drawbridge operation regulations for the U.S. 1 Bridge to allow single span openings during the prosecution of major rehabilitation bridge repairs.

This proposed change would allow the U.S. 1 bridge to open only one of the two moveable spans for bridge openings.

The Coast Guard believes this rule is reasonable because the single span bridge openings should not preclude any vessel traffic from passing through the bridge.

Only one commercial facility operator is located upstream from the U.S. 1 Bridge. That facility will not be operating during the time period this temporary rule will be in effect.

The recreational vessels that normally transit through the U.S. 1 Bridge are small enough in size that they can either pass under the spans without a bridge opening or transit safely with a single span opening.

Discussion of Proposed Rule

This proposed change would amend 33 CFR 117.207 by suspending paragraph (a), which lists the U.S. 1 Bridge and adding a temporary paragraph (c) listing the temporary drawbridge operation schedule in effect from January 2, 2006, through September 1, 2006.

Under this temporary regulation the U.S. 1 Bridge shall continue to open on signal, except that, from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. to 5:45 p.m., daily, the draw need not open for the passage of vessel traffic.

From January 2, 2006, through February 9, 2006, only one of the two moveable spans need open for the passage of vessel traffic. Two span bridge openings shall be provided after at least a seven-day advance notice is given by calling the number posted at the bridge.

From February 10, 2006, through April 1, 2006, only one of the two moveable spans need open for the passage of vessel traffic. No two span openings will be available.

From April 2, 2006, through April 16, 2006, the bridge shall open both moveable spans for the passage of vessel traffic.

From April 17, 2006, through May 26, 2006, only one of the two moveable spans need open for the passage of vessel traffic. No two span openings will be available.

From May 27, 2006, through May 29, 2006, the bridge shall open both moveable spans for the passage of vessel traffic.

From May 30, 2006, through June 30, 2006, only one of the two moveable spans need open for the passage of vessel traffic. Two span openings shall be provided after a seven-day advance notice is given by calling the number posted at the bridge.

From July 1, 2006, through July 4, 2006, the bridge shall open both moveable spans for the passage of vessel traffic.

From July 5, 2006, through September 1, 2006, only one of the two moveable spans need open for the passage of vessel traffic. Two span openings shall be provided after a seven-day advance notice is given by calling the number posted at the bridge.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under the regulatory policies and procedures of DHS is unnecessary.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single moveable span which is sufficient for the present needs of navigation.

Small Entities

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

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

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single span which is sufficient for the present needs of navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact us in writing at, Commander (obr), First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environment documentation because it has been determined that the promulgation of operating regulations or procedures for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From January 2, 2006 through September 1, 2006, section 117.207 is amended by suspending paragraph (a) and adding a temporary paragraph (c) to read as follows:

§ 117.207 Housatonic River.

* * * * *

(c) The draw of the U.S. 1 Bridge, mile 3.5, at Stratford, shall operate as follows:

(1) The draw shall open on signal, except that, from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. through 5:45 p.m., daily, the draw need not open for the passage of vessel traffic.

(2) From January 2, 2006 through March 31, 2006, from 8 p.m. to 4 a.m., the draw shall open on signal if at least a six-hour notice is given by calling the number posted at the bridge.

(3) From January 2, 2006 through February 9, 2006, May 30, 2006 through June 30, 2006, and July 5, 2006 through September 1, 2006, only one of the two moveable spans need open for the passage of vessel traffic. Two span bridge openings shall be provided if at least a seven-day notice is given by calling the number posted at the bridge, except as provided in (c)(1) and (c)(2) of this section.

(4) From February 10, 2006 through April 1, 2006, and April 17, 2006 through May 26, 2006, only one of the two moveable spans need open for the passage of vessel traffic, except as provided in (c)(1) and (c)(2) of this section. No two span openings need be provided.

(5) From April 2, 2006 through April 16, 2006, May 27, 2006 through May 29, 2006, and July 1, 2006 through July 4, 2006, both moveable spans shall open for the passage of vessel traffic, except as provided in (c)(1) and (c)(2) of this section.

* * * * *

Dated: November 29, 2005.

David P. Pekoske,

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

[FR Doc. 05–23752 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[OAR–2004–0011; FRL–8004–8]

RIN 2060–AM32

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Technical Amendments to Evaporative Emissions Regulations, Dynamometer Regulations, and Vehicle Labeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

In the ''Rules and Regulations'' section of this **Federal Register**, we are making these technical amendments as a direct final rule without prior proposal, because we view these technical amendments as noncontroversial revisions. We anticipate no adverse comment. We have explained our reasons for these technical amendments in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the portions of the direct final rule receiving such comment and those portions will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by January 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0011, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- Fax: (202) 566–1741.
- Mail: Docket ID No. OAR–2004–0011, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Docket ID No. OAR–2004–0011, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the fax number for the Air Docket and Reading Room for OAR–2004–0011 is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Certification and Compliance Division, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4851; fax number: (734) 214–4053; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is taking direct final action to make changes to certain provisions of the evaporative and refueling emission regulations for light-duty vehicles, light-duty trucks and heavy-duty vehicles up to 14,000 pounds GVWR, the four-wheel drive dynamometer test provisions, and the vehicle labeling regulations. The evaporative changes are intended to (1) Reduce manufacturers' certification evaporative/refueling test burden, (2) clarify existing evaporative/refueling requirements and (3) better harmonize Federal evaporative/refueling test procedures with California evaporative/refueling test procedures. These actions do not affect manufacturer liability; manufacturers must still comply with applicable evaporative standards. Today's action retains EPA's authority to perform all three evaporative tests (two-day, three-day, and ORVR) on any test vehicle, including certification and in-use vehicles. The dynamometer changes are intended to amend outdated regulations to now include four-wheel drive provisions. The labeling changes are intended to amend regulations to remove outdated information. Today's action does not change the stringency of these existing programs.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are promulgating these revisions as a direct final rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. This proposal incorporates by reference all of the reasoning, explanation, and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. The direct final rule will be effective on February 6, 2006, unless we receive adverse comment by January 9, 2006, or if we receive a request for a public hearing by December 23, 2005. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely

withdrawal of those items only in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

Regulated Entities: Entities potentially affected by this action are those that manufacture and sell motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 86. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Automobile and Light Duty Motor Vehicle Manufacturing; Heavy Duty Truck Manufacturing.

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

Access to Rulemaking Documents Through the Internet: Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are free of charge, except any cost that you already incur for connecting to the Internet.

- EPA **Federal Register** Web site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (either select a desired date or use the Search feature).
- EPA Office of Transportation and Air Quality Web site: *http://www.epa.gov/otaq/* (look in What's New or under specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

I. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a ''significant regulatory action.''

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Today's action may reduce testing and reporting burden by allowing the option for waivers and/or alternative test procedures. The current average annual reporting burden is listed as 542,118 hours and $10,889,000 for 153 respondents by the Office of Management and Budget for light-duty and heavy-duty vehicles. If a manufacturer does not implement any of today's actions, the reporting burden will not change. Otherwise, the burden may be reduced by implementing today's actions but will vary depending upon the options and/or alternative methods chosen. For instance, utilizing the option to waive the two-diurnal diurnal-plus-hot-soak will reduce testing burden by approximately 48 hours and $5,000 per vehicle. Since no alternative procedures for the running loss test or canister loading have been approved at this time, the burden reduction cannot be quantified, but they will, in the future, result in decreases in hours and costs. The other options described in today's action cannot be quantified but would not result in any additional burden.

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

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

Today's rule revises certain provisions of the Evaporative Emissions Compliance Procedure (58 FR 16002, March 24, 1993) and the Onboard Refueling Vapor Recovery Procedure (58 FR 16262, April 6, 1994), such that regulated entities will find it less burdensome to demonstrate compliance with the requirements of the evaporative emissions and ORVR test requirements. More specifically, today's action makes minor revisions to clarify regulations and reduces burdens for manufacturers without reducing stringency. In addition, today's rule revises the dynamometer test provisions (40 CFR 86.135–90, 40 CFR 86.159–00, 40 CFR 86.160–00) and the Vehicle Labeling requirements (40 CFR 86.098–35, 40 CFR 86.1807–01), such that regulated entities will find it less burdensome to test four-wheel drive vehicles and vehicle labels will reflect current information rather than out-dated information. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's action contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that today's action does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Evaporative Emissions rule, Dynamometer regulations, and Labeling regulations. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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, we 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 we consults with state and local officials early in the process of developing the proposed regulation. We 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.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

Today's action 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. Today's action revises certain provisions of earlier rules

that adopted national standards to control vehicle evaporative emissions, dynamometer test provisions, and labeling requirements. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to today's action.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to today's action.

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

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

Today's action is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, today's action does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

Today's action references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's action involve the measurement of vehicle evaporative emissions, the allowance for four-wheel dynamometer test capabilities in certification and in-use testing, and labeling requirements revisions.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing today's action 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). Today's action will be effective February 6, 2006.

II. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 202 of the Act, 42 U.S.C. 7521. Today's action is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: November 29, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–23713 Filed 12–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised 12-Month Finding for the Greater Adams Cave Beetle (*Pseudanophthalmus pholeter*) and the Lesser Adams Cave Beetle (*Pseudanophthalmus cataryctos*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce our revised 12-month finding for a petition to list the greater Adams Cave beetle (*Pseudanophthalmus pholeter*) and the lesser Adams Cave beetle (*Pseudanophthalmus cataryctos*) under the Endangered Species Act (Act). After a review of the best available scientific and commercial information, we conclude that these species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Therefore, we find that proposing a rule to list these species is not warranted, and we no longer consider them to be candidate species for listing. The Service will continue to seek new information on the taxonomy, biology, and ecology of these species, as well as potential threats to their continued existence.

DATES: This finding was made on November 15, 2005. Although no further

action will result from this finding, we request that you submit new information concerning the taxonomy, biology, ecology, and status of the greater and lesser Adams Cave beetles, as well as potential threats to their continued existence, whenever such information becomes available.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, 3761 Georgetown Road, Frankfort, Kentucky 40601. Submit new information, materials, comments, or questions concerning this species to us at the above address.

FOR FURTHER INFORMATION CONTACT: Michael A. Floyd, Kentucky Ecological Services Field Office at the address listed above, by telephone at 502–695–0468, by facsimile at 502–695–1024, or by e-mail at *mike_floyd@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Act provides two mechanisms for considering species for listing. One method allows the Secretary, on her own initiative, to identify species for listing under the standards of section 4(a)(1). We implement this through an assessment process to identify species that are candidates for listing, which means we have on file sufficient information on biological vulnerability and threats to support a proposal to list the species as endangered or threatened, but for which preparation and publication of a proposal is precluded by higher-priority listing actions. Using this process we identified the greater and lesser Adams Cave beetles as candidates for listing in 2001 and included them in the Candidate Notice of Review (CNOR) published in the **Federal Register** on October 30, 2001 (66 FR 54808). In subsequent CNORs that we published June 13, 2002 (67 FR 40657) and May 4, 2004 (69 FR 24875), we continued to recognize these two species as candidates for listing based on updated assessments of their status.

A second mechanism that the Act provides for considering species for listing is for the public to petition us to add a species to the Lists of threatened or endangered species. Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the extent practicable, whether the petition presents substantial scientific or commercial information that listing may be warranted (a ''90-day'' finding). If we make a positive 90-day finding, we must promptly commence a status review of the species and under section 4(b)(3)(B), we must make and publish one of three possible findings within 12 months of receipt of such a petition (a ''12-month finding''):

1. The petitioned action is not warranted;
2. The petitioned action is warranted (in which case we are to promptly publish a proposed regulation to implement the petitioned action); or
3. The petitioned action is warranted but (a) the immediate proposal of a regulation and final promulgation of a regulation implementing the petitioned action is precluded by pending proposals, and (b) expeditious progress is being made to add qualified species to the Lists.

On May 11, 2004, the Service received a petition from the Center for Biological Diversity to list 225 species we previously had identified as candidates for listing, including the greater and lesser Adams Cave beetles. Our standard for making a species a candidate through our own initiative is identical to the standard for making a warranted-but-precluded 12-month petition finding. Pursuant to requirements in section 4(b)(3)(B) of the Act, the CNOR and Notice of Findings on Resubmitted Petitions published by the Service on May 11, 2005 (70 FR 24870), included a finding that the immediate issuance of a proposed listing rule and the timely promulgation of a final rule for each of these petitioned species, including the greater and lesser Adams Cave beetles, was warranted but precluded by higher priority listing actions, and we described those actions as well as the expeditious progress being made to add qualified species to the Lists.

Section 4(b)(3)(C)(i) of the ESA directs that when we make a ''warranted but precluded'' finding on a petition, we are to treat the petition as being one that is resubmitted annually on the date of the finding; thus the ESA requires us to reassess the petitioned actions and to publish a finding on the resubmitted petition on an annual basis. Although we typically make the annual finding for petitioned candidate species through the CNOR, we need not wait a full year to reassess the status of such a species and may publish a revised petition finding separately from the CNOR. That is what we are doing in this situation.

As a result of new information regarding conservation efforts for the greater and lesser Adams Cave beetles, we completed a reassessment of their status in September 2005 (FWS 2005a). The updated assessment document is available from our Kentucky Ecological Services Field Office (see **ADDRESSES**, above). This resubmitted 12-month finding evaluates new information, as described in the species assessment and related documents referenced in it, and re-evaluates previously-acquired information.

Species Information

The greater Adams Cave beetle (*Pseudanopthalmus pholeter*) and lesser Adams Cave beetle (*Pseudanopthalmus cataryctos*) were described by Krekeler (1973) based upon specimens collected in Adams Cave by T.C. Barr and S.B. Peck in 1964. The two beetles are eyeless, reddish-brown insects that range in length from 3 to 5 mm. Both species are predatory, feeding upon small cave invertebrates such as spiders, mites, springtails, and millipedes. More detailed information on the taxonomy, biology, and habitat of these species can be found in FWS (2005a).

Both the greater and lesser Adams Cave beetle are restricted to Adams Cave, a large, limestone cave located in the Bluegrass region of central Kentucky. The passageways of Adams Cave vary in height from approximately 5 to 60 feet and extend over 1,500 feet in length. The only known entrance to the cave and part of its underground passages lie within a 1-acre lot of a rapidly developing residential subdivision (Adams Place) located southwest of Richmond, Kentucky.

Conservation Efforts

The Service secured a commitment from the prior landowner to donate the enrolled property to a conservation organization or other non-profit organization to further ensure adequate, long-term protection and conservation of the cave and species inhabiting it. In 2002, the Southern Conservation Corporation (SCC), a non-profit land trust, accepted ownership of 1 acre of land that includes the only known entrance to the cave and a small portion of the 215-acre groundwater basin for Adams Cave. The Service worked with SCC to develop a Candidate Conservation Agreement with Assurances (CCAA) for the greater and lesser Adams Cave beetles (SCC and Service 2005). This CCAA, signed in March 2005, covers the 1-acre area owned by SCC, including the cave entrance. Through the CCAA, SCC committed to implement three conservation efforts specifically designed to further address the primary threats to the species: (1) SCC will maintain the Adams Cave property in a natural state by implementing provisions that ensure an adequate, natural energy flow into the cave is maintained and that development impacts and the probability of a contaminants spill that might impact the cave habitat are minimized; (2) SCC

will maintain the metal gate at the entrance to Adams Cave; and (3) SCC will control/limit access to Adams Cave. Additional information regarding the details of these three efforts is provided in the species assessment and in the CCAA.

Many aspects of the conservation efforts identified in the CCAA are on-going, such as maintenance of the gate and control of access into the cave, and others are planned. Based on our evaluation of each of the three conservation efforts using the criteria provided in the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100), we have determined that each of the three efforts is sufficiently certain to be implemented and effective so as to have contributed to the elimination or reduction of threats to the species (FWS 2005b). Therefore, the Service can consider these conservation efforts in making a determination as to whether either the greater or lesser Adams cave beetle meets the Service's definition of a threatened or endangered species.

Discussion of Listing Factors

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to greater and lesser Adams Cave beetles are summarized below. Additional information that provides the basis for this summary is available in the species assessment and is incorporated by reference.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In our initial assessment of the greater and lesser Adams cave beetles in 2001, we identified these species candidates for listing due to the present and threatened destruction and modification of their habitat (66 FR 54800). The activities contributing to this threat factor have now been addressed, as summarized below.

One of the identified threats was debris and trash in the cave and around the cave entrance. The debris and trash have been removed.

In our 2001 assessment we identified a potential risk of destruction or modification of the cave environment, including the cave food chain, which could occur as a result of polluted runoff from the surrounding residential development or spills of toxic materials in the watershed in which the cave occurs. We now have determined that the potential risk of polluted stormwater runoff is quite limited because the majority of stormwater flows, the principal means by which pollutants could enter the cave, are diverted away from Adams Cave by a stormwater collection system for Adams Place subdivision. Also, native vegetation plantings now surrounding the cave entrance serve as natural filters for any potential non-point source pollutants that could potentially enter the cave during storm events. Toxic material spills from external sources are improbable because the Adams Cave watershed is not a commercial area where toxic chemicals are produced or stored, nor is there likely to be transport of any significant amounts of toxic materials in the area. Further, one of the conservation efforts in the CCAA prohibits the use of pesticides on the property, and under the CCAA the property cannot be used as a chemical, waste, or debris storage site or facility, and the dumping of debris or potential contaminants on the property is prohibited.

Adams Cave was utilized for camping and other activities for several decades. In an attempt to control access to the cave, the prior owner placed a concrete block wall at the cave entrance. However, this blocked the normal flow of organic material and air that are important components of maintaining the cave ecosystem and food chain. The Service funded and oversaw the removal of the concrete block wall from the cave entrance and the installation of a locked metal gate just inside the entrance of Adams Cave. The metal gate now controls access without limiting the flow of air and various nutrients needed to maintain the cave habitat.

Continued maintenance of the metal gate SCC, coupled with strict control of access to the cave, ensures that human entry into the cave is tightly controlled and restricted. This prevents vandalism and the deposition of trash or other debris that could destroy or modify habitat of the beetles. Routine inspection and maintenance of the cave gate prevents the gate from becoming blocked by fallen rock or other debris, thereby maintaining the natural flow of organic matter from the surface to the cave ecosystem.

We note also that SCC is a non-profit land trust that acquired the site for the purpose of protecting it. As such, no development or other activities that could directly impact the cave habitat are likely to occur under their ownership, as they have committed to, and have been implementing, the conservation efforts in the CCAA.

Based on the information summarized above, the greater and lesser Adams Cave beetles are not threatened by the present or threatened destruction, modification, or curtailment of their habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We have no evidence of overutilization of the greater and lesser Adams Cave beetles in the past for commercial, recreational, scientific, or educational purposes, and have no information that suggests such a threat exists in the foreseeable future. Under the CCAA, collection for scientific purposes would be allowed only with the permission of the Service. The cave has been used for recreational purposes by spelunkers and by passive recreationists in the past, but placement of the locked metal gate across the cave entrance a few years ago has effectively eliminated such uses. Further, through maintenance of the metal gate at the cave entrance, as required by the CCAA, all unauthorized access to the cave is prevented. Based on these considerations, overutilization for commercial, recreational, scientific, or educational purposes is not a threat to the species.

C. Disease or Predation

Disease and predation are not known to be threats for either of these species and are, instead, a normal part of their life history. Mortality from disease or predation likely occurs but has not eliminated these species in the past and we have no reason to expect disease or predation to pose a substantial risk to the species in the future.

D. The Inadequacy of Existing Regulatory Mechanisms

Although the greater and lesser Adams Cave beetles are listed as endangered in Kentucky by the Kentucky State Nature Preserves Commission, they are not protected under State law. However, there are no foreseeable reasons why specific regulatory mechanisms would be necessary to ensure the survival of these species because the landowner, SCC, is committed to and is implementing various conservation efforts to protect the cave and the greater and lesser Adams Cave beetles. This includes, but is not limited to, strictly controlling access to the cave and the property surrounding the cave opening. The metal gate is effective in preventing unauthorized entry into the cave, and as

described above, SCC has committed to and is implementing measures to strictly control access to the cave.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Populations of each of these two cave beetle species are restricted to Adams Cave and are generally believed to be represented by a small number of individuals. Although this is a natural situation, their limited distribution and numbers make these species vulnerable to extirpation due to effects from various manmade factors, such as spills of toxic substances, non-point source pollutants, and habitat-related damage, as described above under Factor A. As described above, the conservation efforts taken prior to the CCAA, as well as the efforts included in the CCAA, have removed or substantially reduced these habitat-related risks. Small population sizes for these species may also limit the natural interchange of genetic material within the population, which could affect long-term genetic and population viability. However, these are endemic species that have persisted over time despite the risks of limited genetic interchange. For the reasons described above, the greater and lesser Adams Cave beetles are not threatened by other natural or human-caused factors.

Revised Petition Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the greater and lesser Adams Cave beetles.

We have evaluated the threats to the greater Adams cave beetle and the lesser Adams cave beetle and considered factors that, individually and in combination, presently or potentially could pose a risk to these species and their habitat. We conclude that listing these species under the Endangered Species Act is not warranted because the species are not likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. These species no longer meet our definition of a candidate and are removed from candidate status.

We will continue to monitor the status of the greater and lesser Adams Cave beetles, and to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. We will reconsider this determination in the event that new information indicates that the threats to these species are of a considerably greater magnitude or imminence than identified here.

References

A complete list of all references cited herein is available upon request from the Kentucky Ecological Services Field Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES**).

Author

The primary author of this finding is Michael A. Floyd, U.S. Fish and Wildlife Service (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2005.

Richard E. Sayers, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–23762 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 235

Thursday, December 8, 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

Animal and Plant Health Inspection Service

[Docket No. 01–009–8]

Wildlife Services; Availability of a Supplemental Environmental Assessment and Decision/Finding of No Significant Impact for Oral Rabies Vaccine Program on National Forest System Lands

AGENCY: Animal and Plant Health Inspection Service, USDA. Cooperating Agency: Forest Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have prepared a supplemental environmental assessment (EA) and proposed decision/finding of no significant impact (FONSI) relative to oral rabies vaccination programs on National Forest System lands in several States. Since the publication of our original EA and decision/FONSI (2001), a subsequent supplemental decision/FONSI (2002), a supplemental EA and decision/FONSI (2003), and a second supplemental EA and decision/FONSI (2004), we determined the need to further expand the oral rabies vaccination program to include National Forest System lands, excluding Wilderness Areas, to effectively stop the westward and northward spread of the rabies virus across the United States and into Canada. Thus, an EA and decision/FONSI was prepared in 2004 to facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of an expanded oral rabies vaccine program. The supplemental EA and proposed decision/FONSI (2005) made available by this notice serves to update program needs and evaluate current data.

DATES: We will consider all comments that we receive on or before January 9, 2006. Unless we determine that new substantial issues bearing on the effects of the proposed expansion of the oral rabies vaccine programs have been raised by public comments on this notice, the proposed decision/FONSI will become final and take effect upon the close of the comment period.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0098 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 01–009–8, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–009–8.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*. To obtain copies of any of the documents discussed in this notice, contact Tara Wilcox, Operational Support Staff, WS, APHIS, 4700 River Road, Unit 87, Riverdale, MD 20737–1234; phone (301) 734–7921, fax (301) 734–5157, or e-mail: *Tara.C.Wilcox@aphis.usda.gov*. When requesting copies, please specify the document or documents you wish to receive.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Slate, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chenell Drive, Suite 7, Concord, NH 03301–8548; (603) 223–9623.

SUPPLEMENTARY INFORMATION:

Background

The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

On December 7, 2000, a notice was published in the **Federal Register** (65 FR 76606–76607, Docket No. 00–045–1) in which the Secretary of Agriculture declared an emergency and transferred funds from the Commodity Credit Corporation to APHIS–WS for the continuation and expansion of oral rabies vaccination (ORV) programs to address rabies in the States of Ohio, New York, Vermont, Texas, and West Virginia.

On March 7, 2001, we published a notice in the **Federal Register** (66 FR 13697–13700, Docket No. 01–009–1) to solicit public involvement in the planning of a proposed cooperative program to stop the spread of rabies in the States of New York, Ohio, Texas, Vermont, and West Virginia. The notice also stated that a small portion of northeastern New Hampshire and the western counties in Pennsylvania that border Ohio could also be included in these control efforts, and discussed the possibility of APHIS–WS cooperating in smaller-scale ORV projects in the States of Florida, Massachusetts, Maryland, New Jersey, Virginia, and Alabama. The March 2001 notice contained detailed information about the history of the problems with raccoon rabies in eastern States and with gray fox and coyote rabies in Texas, along with information about previous and ongoing efforts using ORV baits in programs to prevent the spread of the rabies variants or ''strains'' of concern.

Subsequently, on May 17, 2001, we published in the **Federal Register** (66 FR 27489, Docket No. 01–009–2) a notice in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental effects of the ORV programs described in our March 2001 notice. We solicited comments on the EA for 30 days ending on June 18, 2001. We received one comment by that date. The comment was from an animal protection organization and supported APHIS' efforts toward limiting or eradicating rabies in wildlife populations. The commenter did not, however, support the use of lethal monitoring methods or local depopulation as part of an ORV program.

Finally, on August 30, 2001, we published a notice in the **Federal Register** (66 FR 45835–45836, Docket No. 01–009–3) in which we advised the public of APHIS' decision and finding of no significant impact (FONSI) regarding the use of oral vaccination to control specific rabies virus strains in raccoons, gray foxes, and coyotes in the United States. That decision allows APHIS–WS to purchase and distribute ORV baits, monitor the effectiveness of the ORV programs, and participate in implementing contingency plans that may involve the reduction of a limited number of local target species populations through lethal means (i.e., the preferred alternative identified in the EA). The decision was based upon the final EA, which reflected our review and consideration of the comments received from the public in response to our March 2001 and May 2001 notices and information gathered during planning/scoping meetings with State health departments, other State and local agencies, the Ontario Ministry of Natural Resources, and the Centers for Disease Control and Prevention.

Following the August 2001 publication of our original decision/FONSI, we determined there was a need to expand the ORV programs to include the States of Kentucky and Tennessee to effectively stop the westward spread of raccoon rabies. Accordingly, we prepared a supplemental decision/FONSI to document the potential effects of expanding the programs. We published a notice announcing the availability of the supplemental decision/FONSI in the **Federal Register** on July 5, 2002 (67 FR 44797–44798, Docket No. 01–009–4).

Following the publication of the supplemental decision/FONSI in July 2002, we determined the need to further expand the ORV program to include the States of Georgia and Maine to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. To facilitate planning, interagency coordination, and program management and to provide the public with our analysis of potential individual and cumulative impacts of the expanded ORV programs, we prepared a supplemental EA that addresses the inclusion of Georgia and Maine, as well as the 2002 inclusion of Kentucky and Tennessee, in the ORV program. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on June 30, 2003 (68 FR 38669–38670, Docket No. 01–009–5).

Following publication of the 2003 supplemental EA and decision/FONSI, we determined the need to further expand the ORV program to include portions of National Forest System lands, excluding Wilderness Areas, within several eastern States. The National Forest System lands where APHIS–WS involvement could be expanded included the States of Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina, Massachusetts, Maryland, and New Jersey. Cooperative rabies surveillance activities and/or baiting programs were already being conducted on various land classes, with the exception of National Forest System lands, in many of the aforementioned States. The programs' primary goals were to stop the spread of a specific raccoon rabies variant or ''strain'' of the rabies virus. If not stopped, this strain could potentially spread to much broader areas of the United States and Canada and cause substantial increases in public and domestic animal health costs because of increased rabies exposures. As numerous National Forest System lands are located within current and potential ORV barrier zones, it became increasingly important to bait these large land masses to effectively combat this strain of the rabies virus. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on February 20, 2004 (69 FR 7904–7905, Docket No. 01–009–6).

Following the 2004 supplemental EA and decision/FONSI for expansion of the ORV program to include portions of National Forest System lands, we determined the need to further expand the ORV program to include 25 eastern States (Maine, New York, Vermont, New Hampshire, Pennsylvania, Ohio, Virginia, West Virginia, Tennessee, Kentucky, Alabama, Georgia, Florida, North Carolina, South Carolina, Massachusetts, Maryland, Connecticut, Rhode Island, Delaware, Indiana, Michigan, Mississippi, Louisiana and New Jersey), the District of Columbia, and Texas to effectively prevent the westward and northward spread of the rabies virus across the United States and into Canada. In addition, we prepared a new decision/FONSI based on the supplemental EA that was published in the **Federal Register** on September 23, 2004 (69 FR 56992–56993, Docket No. 01–009–7).

Following the 2004 supplemental EA and decision/FONSI, we determined the need to also expand the ORV program to include portions of National Forest System lands, excluding Wilderness Areas, within the same 25 eastern States and the District of Columbia. As numerous National Forest System lands are located within current and potential ORV barrier zones, it has become increasingly important to bait these large land masses to effectively combat this strain of the rabies virus. The supplemental EA made available by this notice analyzes the proposed action and several alternatives with respect to a number of environmental and other issues raised by involved cooperating agencies and the public.

The August 2001 EA and decision/FONSI, the July 2002 supplemental decision/FONSI, the June 2003 supplemental EA and decision/FONSI, the February 2004 EA and decision/FONSI for expanded ORV program activities on National Forest System lands, the September 2004 supplemental EA and decision/FONSI, and the supplemental EA and proposed decision/FONSI for further expansion of ORV program activities on National Forest System lands, that are the subject of this notice have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of December, 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–7064 Filed 12–7–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Tobacco Transition Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the interpretation the Commodity Credit Corporation (CCC) will use in administering the regulations set forth at 7 CFR part 1463 with respect to the Tobacco Transition Assessments. Generally, under these regulations CCC must determine the market share of a tobacco product manufacturer or tobacco product importer as a percentage of six statutorily specified sectors of the tobacco trade. Based upon information provided to CCC in the conduct of administrative hearings held pursuant to 7 CFR 1463.11, CCC has determined that the manner in which it calculates this percentage is subject to more than one interpretation and, based upon the evidence provided at these hearings, has determined that changes to the calculation should be made beginning with assessments collected under 7 CFR part 1463 after January 1, 2006. However, this change will not apply to invoices issued February 1, 2006. These invoices will reflect corrections and other necessary adjustments associated with fiscal year 2005.

FOR FURTHER INFORMATION CONTACT: Misty Jones, Tobacco Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514. Phone: (202) 720–7413; e-mail: *Misty.Jones@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

Background

Title VI of the American Jobs Creation Act of 2004 (Pub. L. 108–357) (the 2004 Act) repealed the marketing quota and acreage allotment (marketing quota) and price support programs for tobacco that were authorized by the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949, effective with the 2005 and subsequent crops of tobacco. Sections 622 and 623 of the 2004 Act establish a 10-year transitional payment program for tobacco producers and owners of tobacco marketing quotas who were affected by the termination of the marketing quota and price support programs. Sections 625 through 627 of the 2004 Act established an assessment regime under which CCC collects assessments to fund the 10-year transitional payment program. Generally, these assessments are to be collected for 40 calendar quarters (2005–2014) and are based upon individual market shares of tobacco product manufacturers and importers within six sectors specified by the 2004 Act. The regulations issued by CCC with respect to these assessments were issued in a final rule published in the **Federal Register** on February 10, 2005 (70 FR 7007–7014). The purpose of this notice to advise tobacco product manufacturers and tobacco product importers that effective with assessment notices issued after January 1, 2006, CCC will determine such entities' market share within a sector as a percentage expressed to the sixth decimal point.

As explained below, section 625(a)(3) of the 2004 Act is ambiguous with respect to its directive in calculating entities' market shares. Section 625(b)(3) defines ''market share'' as follows:

> *Market Share.*—The term ''market share'' means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product.

In implementing this provision, CCC construed ''market share'' to mean an entity's percentage of the market determined, for all products except cigars, by dividing the volume of gross taxable removals for the entity by the total removals for the sector for all entities reporting to CCC, and, for cigars, by dividing the excise taxes paid for each entity by the total excise taxes paid for all cigar manufacturers and importers. Accordingly, under CCC's initial interpretation, if there were 10 entities who equally comprised all of the market of a sector, each market share was expressed as 0.1000. CCC recognized that in using its initial method of calculating a market share of an entity that there could be a disproportionate impact on entities with market shares less than .0001 that reach the ''cut-off point'' in that entities with market shares from .00005 to .00009 would, due to rounding, each be deemed to have a .0001 market share. Thus, CCC provided that once this determination had been made as to which entities to include in the assessment, CCC would calculate the actual assessment for an entity to the ninth decimal point.

During the course of administrative hearings in which appellants contested the level of their assessments in the first two quarters, it was brought to CCC's attention that this was not the only interpretation that could be given to the concept of expressing a market share to the ''fourth decimal point''. Appellants argued that a ''market share'' of 10 percent is more properly referred to in this example as 10.0000 percent and not .1000. The following is the written submission in support of this interpretation presented jointly by six of the entities subject to the assessment:

> FETRA (the Fair and Equitable Tobacco Reform Act) assessments should be allocated based on *percentage* market shares expressed as decimals to the fourth place.
>
> FETRA defines market share as the ''share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product.'' This language, properly read, means that market share is to be calculated as a *percentage* share expressed to four decimal places. Accordingly, under FETRA, a manufacturer or importer should be required to pay an assessment unless its market share rounds to less than 00.0001% (which can also be written as .000001).
>
> The USDA's first three assessment notices did not adopt this approach. Instead, the agency has exempted from assessment liability any company whose market share rounds to less than 00.01% (which can also be written as .0001). Consequently, there is a two-decimal place difference between the two approaches, which means that a company exempted from FETRA assessments under the USDA approach could have a market share as much as 100 times larger than the largest company exempted under the correct percentage share approach.
>
> Under the USDA's approach, manufacturers and importers selling substantial quantities of tobacco products would avoid paying assessments—in direct violation of the clear statutory mandate of FETRA. As is explained below, if the data for the most recent quarterly assessment (for the April–June 2005 quarter) are annualized, the portion of the cigarette market, for example, that would be excused from paying any assessment would collectively amount to more than 9.5 million packs of cigarettes, representing sales revenues of more than $33 million.
>
> By contrast, the percentage share approach limits the exemption to companies that legitimately can be viewed as having *de minimis* market shares, thereby effectuating the legislative intent that all manufacturers and importers must pay assessments. As explained below, the percentage share approach is supported by the language of FETRA and by analogous precedents.
>
> Defining market share as a percentage expressed to the fourth decimal place is necessary to effectuate the clear purposes of FETRA.
>
> FETRA imposes the following clear mandate: ''The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments * * * on *each* tobacco product manufacturer and tobacco products

importer that sells tobacco products in domestic commerce in the United States * * *.'' 7 U.S.C. 518d(b)(1) (emphasis added). This language provides no discretion to exempt any manufacturers or importers.

The approach taken by USDA in the initial assessments violates this statutory mandate because it allows companies with substantial sales of cigarettes to avoid FETRA assessments. This point can be illustrated with the following example:

Assume a manufacturer had revenues of $850,000 in the fourth quarter of 2004. There is no rational basis for defining this company as a *de minimis* seller of cigarettes and exempting it from assessment:

- Revenue—$850,000.
- No. of packs sold (assuming $3.50 per pack) = 242,857.
- Taxes owed (FET at .39 per pack) = $94,714.23.
- Market share: [94,714/1,949,053,653] = 0.00004859486.

Under the approach used in the initial assessments, this company would be exempt from the payment of assessments because its market share is .000049, which rounds to .0000 (00.00%). However, if the percentage share approach is applied, the company would have to pay an assessment, since its market share—00.0049%—exceeds the threshold of 00.0001%.

As noted above, the approach used in the initial assessments will allow a significant portion of the cigarette market to remain exempt from assessment. On a per-company basis, this means that an individual manufacturer or importer could have annual sales of as much as 900,000 packs and revenues in excess of $3 million per year and still escape the payment of assessments. In contrast, under the approach described in this paper, the exemption would apply only to companies with annual sales less than approximately 9,000 packs and revenues less than approximately $32,000 per year—which appropriately can be viewed as de minimis. *Id.*

More importantly, the percentage of the market that USDA is exempting from assessment has more than doubled from the first assessment for the fourth quarter of calendar 2004 (companies selling 1,040,638 packs of cigarettes in this quarter exempted from assessment) to the assessment for April–June 2005 (companies selling 2,376,331 packs of cigarettes in this quarter exempted from assessment). This means that millions of packs of cigarettes per year will not be subject to assessment. For example, if the figures from the second calendar quarter of 2005 are projected on an annual basis, USDA's approach to FETRA will result in over 9.5 million packs of cigarettes, representing more than $33 million in revenue, being exempted from FETRA assessment. This is clearly inconsistent with the congressional mandate that USDA impose quarterly assessments on each tobacco product manufacturer and importer that sells tobacco products domestically in the United States. 7 U.S.C. 518d(b)(1).

Adopting the percentage share approach, and thus limiting any exemption to companies with truly *de minimis* market shares, achieves a number of important objectives by—

- More closely effectuating the statutory mandate to assess all manufacturers and importers;
- Leveling the playing field among competitors since no company with substantial sales would have the unfair advantage of an exemption;
- Substantially reducing the USDA's exposure in the likely event that companies subject to assessment are successful in persuading a court that USDA cannot assess them in excess of their true market shares to cover the shares of companies exempted from assessment liability; and
- Perhaps, by reducing the amount at issue, facilitating a resolution of the current market share cap issue short of litigation.

The percentage share approach is supported by the language of FETRA.

In another section of FETRA, Congress clearly uses the word ''share'' to denote *percentage* share. Thus, in describing how assessments are to be allocated among different classes of tobacco products in subsequent years, FETRA states that:

The Secretary shall periodically adjust the *percentage* of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product * * * to reflect changes in the *share of gross domestic volume* held by that class of tobacco product.

7 U.S.C. 518d(c)(2) (emphasis added). In this context, it is explicitly clear that the ''share'' of gross domestic volume is a *percentage share*.

The same section of FETRA uses the same term—''share''—when it defines the term ''market share'' as each manufacturer's ''share * * * of the total volume of domestic sales of the class of tobacco product.'' This use of the same term is significant because ''[i]t is a settled principle of statutory construction that '(w)hen the same word or phrase is used in the same section of an act more than once, and the meaning is clear as used in one place, it will be construed to have the same meaning in the next place.' '' *United States* v. *Nunez*, 573 F.2d 769, 771 (2d Cir.), *cert denied*, 436 U.S. 930 (1978), *quoting Meyer* v. *United States*, 175 F.2d 45, 47 (2d Cir. 1949), *quoting Lewellyn* v. *Harbison*, 31 F.2d 740, 742 (3d Cir.), *cert. denied*, 280 U.S. 560 (1929); *Arnold* v. *Eastern Air Lines, Inc.*, 712 F.2d 899, 904 (4th Cir. 1983).

Thus, when FETRA is read as a whole, the proper interpretation of ''share'' in section 518d(a)(3)—defining ''market share''—is that it means a *percentage share* of the total market. Nothing in FETRA provides any basis for a different approach. Accordingly, when section 518d(a)(3) states that each manufacturer's or importer's ''share'' is to be expressed as a decimal to four places, it means that it should be expressed as a percentage share expressed to four decimal places.

Other federal agencies have interpreted statutory references to ''market share'' to mean a percentage share of the total market.

The Food, Drug and Cosmetic Act imposes limitations on the types of claims that can appear on food labels. Among other things, the labels on a food product cannot claim that it is low cholesterol unless ''the level of cholesterol is substantially less than the level usually present in the food or in a food which substitutes for the food and which has a significant *market share* * * *.'' 21 U.S.C. § 343(r)(2)(A)(iii)(I) (emphasis added). The statute does not define market share. However, the FDA regulations define that term as a *percentage* of the total market:

If the product meets these conditions only as a result of special processing, alteration, formulation, or reformulation, the amount of cholesterol is reduced by 25 percent or more from the reference product it replaces as described in § 317.313(j)(1) and for which it substitutes as described in § 317.313(d) that has a *significant (e.g., 5 percent or more of a national or regional market) market share.* 9 CFR 317.362(d)(1)(v) (emphasis added). Clearly, the FDA interpreted the term market share using its ordinary and reasonable meaning of a percent of the total market.

The Federal Insecticide, Fungicide and Rodenticide Act (''FIFRA'') requires EPA to re-register and assess fees for all pesticides initially registered prior to November 1, 1984. If more than one party sought to register the same active ingredient, the EPA would allocate the $150,000 fee based on each registrant's market share for that active ingredient. Specifically, FIFRA stated that:

[i]f two or more registrants are required to pay [a re-registration fee] with respect to a particular active ingredient, the fees for such an active ingredient shall be apportioned among such registrants on the basis of *market share* in United States sales of the active ingredient for the three calendar years preceding the payment of such fee.

7 U.S.C. 136a–1(i)(7) (emphasis added). The term ''market share'' is not explicitly defined in the statute or in the Agency's regulations. However, when EPA actually assessed each registrant's fee, it did so based upon its percentage share of the total market.

The courts have also interpreted the term ''market share'' to mean a percentage share.

For example, under the ''market share liability'' theory used in mass tort cases, ''causation and damages are apportioned to defendants based on the *percentage of the product sold by each defendant* within the entire production of the product.'' *Wood* v. *Eli Lilly & Co.*, 38 F.3d 510, 513 (10th Cir. 1994) (emphasis added), *citing Sindell* v. *Abbott Labs.*, 607 P.2d 924, 937, *cert. denied*, 449 U.S. 912 (1980); *Martin* v. *Abbott Lab.*, 689 P.2d 368, 380 (Wash. 1984). *See also Bateman* v. *Johns-Manville Sales Corp.*, 781 F.2d 1132, 1133 (5th Cir. 1986) (''Each defendant that could not make that exculpatory showing would then be held liable for a proportion of the judgment corresponding to its *percentage* share of the DES market'') (emphasis added).

Similarly, in antitrust cases, when courts address market share, they are clearly viewing that term as a *percentage* of the total market at issue. *See, e.g., Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 213–14 (1993) (describing market share in terms of percentages); *Richter Concrete Corp.* v. *Hilltop Concrete Corp.*, 691 F.2d 818, 826 (6th Cir. 1982) (''Market strength is often indicated by market share. During the relevant period, Hilltop's market

share declined from approximately 40% to approximately 30%'').''

As noted in the submission of the six appellants, the ambiguity in the 2004 Act stems from whether a ''market share'' refers to a ''percentage share'' determined to the fourth decimal point, *e.g.,* is a 10 percent market share to be expressed as 10.000 or .10000?

Accordingly, under this approach the following ''market shares'' would be determined with respect to an entity comprising the following sizes of the sector:

Size of sector	Market share in percent	Market share as fraction
Assessments Levied		
All	100.00000	1.0000000
One tenth	10.00000	0.1000000
One hundredth	1.00000	0.0100000
One thousandth	0.10000	0.0010000
One ten-thousandths	0.01000	0.0001000
One hundred-thousandths	0.00100	0.0000100
One millionth	0.00010	0.0000010
Assessments Not Levied For All Shares Less Than Nine Ten-millionths		
Nine ten-millionths	0.00009	0.0000009

With respect to the assessments levied by CCC in a typical quarter with an assessment of $237.5 million, use of the interpretation set forth by these six appellants would likely produce the following changes for each sector:

ADDITIONAL COMPANIES ASSESSED UNDER THE NEW METHOD FOR A TYPICAL $237.5 MILLION ASSESSMENT

Class	Cigarettes	Cigars	Snuff	Roll-own	Chew	Pipe	Total
Number of Additional Companies Paying an Assessment	20	57	4	4	1	2	88
Assessment Collected from Above Companies	$105,928	$4,752	$45	$48	$3	$9	$110,784

Use of the interpretation set forth by these six appellants would also produce the following changes for two different sized companies:

IMPACT OF CHANGE ON TWO DIFFERENT SIZED TOBACCO PRODUCT MANUFACTURERS

Share	
Typical Quarterly Assessment: All kinds	$237,500,000
Cigarettes' Share	0.96331
Typical Quarterly Assessment: Cigarettes	$228,786,125
Big Company Example	
New Method [1]	
Big Company Share	25.0000%
Big Company Quarterly Assessment	$57,196,653
Previous Method [2]	
Big Company Share	25.00%
Big Company Share recomputed after small companies dropped out)	25.00729%
Big Company Quarterly Assessment	$57,213,210
Big Company Savings	
Big Company savings per quarter	−$16,557
Small Company Example	
New Method [1]	
Small Company Share	0.0040%

IMPACT OF CHANGE ON TWO DIFFERENT SIZED TOBACCO PRODUCT MANUFACTURERS—Continued

Small Company Quarterly Assessment	$9,151
Previous Method [2]	
Small Company Share	0.004%
Small Company Share Rounded Up	0.000%
Small Company Share recomputed after small companies dropped out	—
Small Company Quarterly Assessment	$0
Small Company Cost	
Small Company cost per quarter	$9,151

[1] Shares not recalculated after small companies drop out.

[2] Shares recalculated to 9 decimal places after small companies drop out.

Interpretation

It is CCC's position that either interpretation is possible under section 625(b)(3) of the 2004 Act. But, in construing this section within the overall framework established by Congress, CCC has determined that use of the approach set forth by the six appellants provides a more accurate representation of an individual entity's share in each of the six statutorily-defined tobacco sectors. Accordingly, after January 1, 2006, when making determinations under 7 CFR parts 1463.1 through 1463.11 that relate to ''market share'', CCC will interpret such phrase to mean the percentage share of an entity's market position in one of the six individual tobacco product sectors specified in section 625(c) of the 2004 Act. In expressing this share to the fourth decimal point as provided in section 625(a)(3), for example, a market share of 1/10 of the market will be converted to 10.0000 percent and a market share of 1/10000 will be converted to .0100 percent. In addition, this approach is also consistent with the manner in which Congress has addressed the six sector segments of the tobacco industry. In section 625(c)(3) of the 2004 Act, for example, the share for manufacturers and importers of cigarettes of the overall tobacco industry for Fiscal Year 2005 is expressed as ''96.331 percent'' and not as .96331. As a result of this change, CCC will no longer further modify assessments to the ninth decimal point for individual companies within these six sectors.

Signed at Washington, DC November 30, 2005.

Thomas B. Hofeller,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E5–7030 Filed 12–7–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: Cooperative State Research Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise and request an extension for a currently approved information collection (OMB No. 0524–0038) for Form CSREES–2103 ''Certification of Offset and Entitlement for 1890 Land-Grant Institutions.''

DATES: Submit comments on or before February 6, 2006.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods to Joanna Moore, Policy Specialist, Office of Extramural Programs; Policy, Oversight, and Funds Management Branch; Mail: CSREES/USDA; Mail Stop 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 2249, Washington, DC 20024; Fax: (202) 401–7752; or E-mail: *jmoore@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Danus, Chief, Policy, Oversight, and Funds Management Branch; Office of Extramural Programs; CSREES/USDA; Mail Stop 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; Phone: (202) 401–4325; E-mail: *edanus@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

CSREES proposes to revise this information collection to include all forms used by grantees to certify the availability of matching funds for the formula funds provided to CSREES cooperating institutions, most of which are the 1862 and 1890 land-grant institutions. The formula funds are provided to the eligible CSREES cooperating institutions under sections 1433, 1444, and 1445 of the National Agricultural research, Extension, and Teaching Policy Act of 1977 (NARETPA), Hatch Act, Smith-Lever Act, and McIntire-Stennis Cooperative Forestry Research Act. Consequently, CSREES proposes revising the title of the Information Collection from ''Certification of Offset and Entitlement for 1890 Land-Grant Institutions'' to ''Certification of Offset and Entitlement'' as these forms would now apply to all CSREES cooperating institutions required to certify that matching funds are available. Previously this information collection only applied to the 1890 land-grant institutions for the purposes of certifying the matching requirements under NARETPA sections 1444 and 1445.

CSREES plans to eventually develop a form (i.e., to replace the current form) that would be part of the set of SF–424 Mandatory, Application for Federal Assistance, to be used for the annual application of CSREES formula funds. CSREES is in the process of developing a pilot for the submission of required forms via Grants.gov for one of the CSREES formula grant programs (i.e., formula funds provided under the McIntire-Stennis Cooperative Forestry Research Act).

Title: Certification of Offset and Entitlement.

OMB Number: 0524–0038.

Expiration Date of Current Approval: May 31, 2006.

Type of Request: Intent to revise and extend a currently approved information collection for three years.

Abstract: CSREES has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and education. This information collection is needed for eligible cooperating institutions to certify that matching funds are available prior to the receipt of formula funds provided under NARETPA sections 1433, 1444, and 1445; Hatch Act; Smith-Lever Act; and McIntire-Stennis Cooperative Forestry Research Act.

Need for the Information: Form CSREES–2103, ''Certification of Offset and Entitlement'' will be submitted up to three times per year for research and extension activities to provide information on the projected matching funds, the actual matching funds, and any revisions to the actual matching funds.

Respondents: Respondents will be the 57 1862 land-grant institutions: 2 state agricultural experiment stations not associated with an 1862 land-grant institution; 18 1890 land-grant institutions, including Tuskegee University and West Virginia State University; 9 schools of veterinary medicine; and 10 certified forestry schools, which will provide information to USDA on the amount and source of non-Federal funds made available by the States to the eligible institutions to meet the matching requirements for each CSREES formula program.

Estimate of the Burden: The estimated burden on the respondents for Form CSREES–2103, ''Certification of Offset and Entitlement,'' is 3.6 hours per response. This burden estimate is based on a small survey of eligible institutions that have experience completing the current form.

Estimated Number of Respondents: 96.

Estimated Number of Responses: 838.

Estimated Total Annual Burden on Respondents: 3,016.8 hours.

Frequency of Responses: Up to three times a year.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done at Washington, DC, this 1st day of December 2005.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 05–23769 Filed 12–7–05; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee (RAC) will meet January 20, 2006 in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public comment, (3) Sub-committees, (4) Discussion—items of interest, (5) Discussion/approval of projects, (6) next agenda items and meeting date.

DATES: The meeting will be held on January 20, 2006, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; E-mail: *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by January 10, 2006. Public will have the opportunity to address the committee at the meeting.

Dated: November 30, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–23775 Filed 12–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 051017266–5266–01]

Correction to ''Revision to the Unverified List—Guidance as to 'Red Flags' ''

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice

SUMMARY: In a **Federal Register** Notice published on October 31, 2005, (**Federal Register**, Vol. 70, No. 209, page 62295), the Department of Commerce, Bureau of Industry and Security published a notice entitled ''Revision to the Unverified List—Guidance as to 'Red Flags' ''. This notice inadvertently included a misspelling of the name of one Entity: ''Elaton Company'' should have been spelled ''Etalon Company''. This Notice advises exporters that the correct information for this Entity is: Etalon Company, 20B Berezhkovskaya Naberezhnaya, Moscow, Russia.

DATES: This notice is effective December 8, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

For the convenience of the reader the Unverified List, as modified by this notice, is set forth below.

Darryl W. Jackson,

Assistant Secretary for Export Enforcement.

UNVERIFIED LIST

[As of December 8, 2005]

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN. BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park.
Lucktrade International PTE Ltd.	Singapore	35 Tannery Road #01–07 Tannery Block Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.
Jetpower Industrial Ltd.	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd.	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd.	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd.	Hong Kong Special Administrative Region.	Unit 2208, 22/F, 118 Connaught Road West.
Parrlab Technical Solutions, LTD	Hong Kong Special Administrative Region.	1204, 12F Shanghai Industrial Building, 48–62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd.	Hong Kong Special Administrative Region.	Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay.
Design Engineering Center	Pakistan	House 184, Street 36, Sector F–10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Etalon Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47–A Sovetskaya Street, Pskov, Russia Federation, 180000.

[FR Doc. 05–23805 Filed 12–7–05; 8:45 am]
BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–806)

Certain Hot–Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Certain Hot–Rolled Carbon Steel Flat Products from Romania. The period of review is November 1, 2003, through October 31, 2004. We preliminarily determine that sales of subject merchandise by Ispat Sidex, S.A. (now known as Mittal Steel Galati, S.A. (MS Galati)[1]), have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s) and (2) a brief summary of the argument(s). We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: December 8, 2005.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu at (202) 482–0198 or David Dirstine at (202) 482–4033, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published an antidumping duty order on certain hot–rolled carbon steel flat products from Romania. See *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Romania*, 66 FR 59566 (November 29, 2001).

On November 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania for the period November 1, 2003, through October 31, 2004. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 63359 (November 1, 2004). On November 30, 2004, the Department received three timely requests for an administrative review of this order. The Department received a timely request from Nucor Corporation, a domestic interested party, requesting that the Department conduct an administrative review of shipments exported to the United States from MS Galati and Metalexportimport, S.A. (MEI). In addition, the Department received a timely request from MS Galati, Sidex Trading S.r.l. (Sidex Trading), and Ispat North America Inc. (INA), requesting that the Department conduct an administrative review of subject merchandise produced by MS Galati and exported to the United States by Sidex Trading. Also, the Department received a timely request on behalf of United States Steel Corporation (USSC), the petitioner in this proceeding, to conduct an administrative review of subject merchandise produced or exported by MS Galati or MEI.

On December 27, 2004, the Department initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania for the period November 1, 2003, through October 31, 2004 (*Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 77181 (December 27, 2004)).

On July 13, 2005, due to the complexity of the case and pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the deadline for the completion of the preliminary results in this administrative review until no later than November 30, 2005. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from Romania*, 70 FR 40318 (July 13, 2005).

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. The merchandise subject to this order is classified in the HTSUS at the following subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products are covered by this order, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive. For further information on the scope of the order, see *Certain Hot–Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 70644 (December 7, 2004).

[1] On July 15, 2005, we determined that MS Galati was the successor-in-interest to Ispat Sidex, S.A. See *Final Results of Antidumping Duty Changed-Circumstances Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 70 FR 40982 (July 15, 2005).

Notice of Intent to Rescind in Part

In accordance with 19 CFR 351.213(d)(3), we will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the period of review there were no entries, exports, or sales of the subject merchandise. MEI submitted a letter indicating that there were no sales or shipments of subject merchandise during the 2003–2004 period of review. We have examined data maintained by CBP and are satisfied that MEI made no shipments during the period of review. We intend to rescind this review at the time of our final results if we continue to find no evidence of sales during the period of review.

Verification

As provided in section 782(i) of the Act and 19 CFR 351.307, we conducted a home-market cost and sales verification of the questionnaire responses of MS Galati. We used standard verification procedures, including on–site inspection of MS Galati's production facility. Our cost and home-market sales verification results are outlined in the Memorandum to File, Cost of Production and Constructed Value Data Submitted by Mittal Steel Galati S.A. (formerly known as Ispat Sidex SA) in the Antidumping Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from Romania, dated November 30, 2005, and Memorandum to the File, Home-Market Sales Verification of Questionnaire Responses Submitted by Mittal Steel Galati S.A. in the 2003–2004 Antidumping Duty Review of Certain Hot–Rolled Carbon Steel Flat Products from Romania, dated November 30, 2005. The report concerning the verification of MS Galati's U.S. sales response will be available to the parties and put on the record shortly following the issuance of these preliminary results of review. Public versions of these reports are on file in the Central Records Unit (CRU) located in room B–099 of the main Commerce building.

Date of Sale

In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. As such, the date of the invoice is the presumptive date although this presumption may be overcome.

In the home market, MS Galati reported the date of invoice as the date of sale. For its constructed export–price (CEP) sales in the United States, MS Galati reported the date of INA's customer order acknowledgment as the date of sale. In the prior review covering November 1, 2002, through October 30, 2003, MS Galati had reported the date of invoice as the date of sale for U.S. sales. In response to the Department's June 14, 2005, supplemental questionnaire requesting an explanation of the change in practice, MS Galati stated that, previously, sales were made by Ispat Sidex directly to its U.S. customers (INA was not involved in sales of subject merchandise made by Ispat Sidex) and there was no such similar document—a customer order acknowledgment —used for such sales. MS Galati also stated that its first sales of subject merchandise during the period of review were made after March 2004. According to MS Galati, these sales were made using the customer order acknowledgment INA issued to unaffiliated U.S. customers. MS Galati also indicated that INA's customer order acknowledgments contained language which made the prices and quantities final. It also provided sample cover letters sent with the customer order acknowledgment, INA's customer terms and conditions, and affidavits of employees as evidence of notice of the change in INA's business practice.

Based on our review of INA's customer order acknowledgments during the verifications we conducted at MS Galati's headquarters in Romania along with our close examination of the customer order acknowledgments INA placed on the record in MS Galati's response to our supplemental questionnaire, we conclude that all substantive terms of sale, *i.e.*, price, quantity, terms of delivery, and payment, were fixed and not susceptible to change after the date of INA's customer order acknowledgment. As such, we conclude that MS Galati has provided satisfactory evidence to support its assertion that the material terms of sale are fixed at the time of INA's customer order acknowledgment and, for these preliminary results, we have used the date of the customer order acknowledgment as the appropriate date of sale for reporting U.S. sales.

Fair–Value Comparisons

To determine whether MS Galati's sales of the subject merchandise from Romania to the United States were made at prices below normal value, we compared the CEP to the normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. Therefore, pursuant to section 777A(d)(2), we compared the CEPs of individual U.S. transactions to the monthly weighted–average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(i) of the Act, we considered all products within the ''Scope of the Order'' section above which were produced and sold by MS Galati in the home market during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on the following eleven characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: 1) painted; 2) quality; 3) carbon content; 4) yield strength; 5) thickness; 6) width; 7) form; 8) temper rolled; 9) pickled; 10) edge trim; and 11) patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions we identified in our questionnaire. See Appendix V of the Department's antidumping duty questionnaire to MS Galati dated January 21, 2005.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d). For purposes of this administrative review, we have treated sales by MS Galati as CEP transactions because MS Galati's U.S. affiliate, INA, made the first sale to an unaffiliated party in the United States. Therefore, we based CEP on the packed duty–paid prices to unaffiliated purchasers in the United States in accordance with sections 772(b), (c), and (d) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and

surveying), and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses) and indirect selling expenses.

We revised the calculation of U.S. credit expense from the amount MS Galati claimed to reflect the seller's cost of extending credit between the date of shipment from Romania and final payment from the first unaffiliated customer. Credit expense is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. In CEP cases where the merchandise does not enter inventory of a U.S. affiliate in the United States prior to sale to an unaffiliated U.S. customer, the Department calculates the credit period from the time the merchandise is shipped from the producer's country to the date of payment. See, *e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 6.

For these CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home-Market Viability

We compared the aggregate volume of home-market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(c) of the Act, to form a basis for normal value. Because the volume of home-market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of normal value upon the home-market sales of the foreign like product. Thus, we used as normal value the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade as the CEP sales, as appropriate. After testing home-market viability, we calculated normal value as discussed in the ''Price-to-Price Comparisons'' section of this notice.

B. Cost-of-Production Analysis

On March 31, 2005, USSC submitted an allegation that home-market sales by the former Ispat Sidex, now MS Galati, were at prices below the cost of production. Upon review of USSC's allegation, we found reasonable grounds to believe or suspect that MS Galati made sales at below the cost of production so we initiated a sales-below-cost investigation on May 24, 2005, and instructed MS Galati to provide cost-of-production information concerning its sales.

The Department has now conducted an investigation to determine whether MS Galati made home-market sales at prices below the cost of production during the period of review within the meaning of section 773(b) of the Act.

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average cost of production based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for home-market general and administrative (G&A) expenses, interest expenses, and packing expenses. We relied on the cost-of-production data MS Galati submitted in its questionnaire responses with the following exceptions:

- We disallowed the claimed offset to G&A expenses for the reversal of a certain provision. This amount is not actual income for the company but rather is a reversal of a provision for expenses accrued prior to the period of review. Since the reversal of the provision does not appear to relate to current period costs, we do not consider it appropriate to offset the current period costs with this reversal. See Memorandum to Neal Halper, Director Office of Accounting: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Mittal Steel Galati dated November 30, 2005.
- We adjusted the transfer prices for certain inputs MS Galati purchased from affiliated suppliers to reflect the higher of the transfer price or the market price pursuant to section 773(f)(2) of the Act. *Id.*
- We adjusted MS Galati's reported cost of manufacturing to include two accounts which MS Galati used to offset its cost of manufacturing. These two accounts were also reported in the sales listing for the home market. *Id.*

We then compared the weighted-average cost of production for MS Galati to its home-market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the cost of production within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised cost of production to the home-market prices, less any applicable movement charges and direct and indirect selling expenses.

We disregarded below-cost sales where 20 percent or more of MS Galati's sales of a given product during the period of review were made at prices below the cost of production and, thus, such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (c) of the Act, and where, based on comparisons of the price to the weighted-average cost of production for the period of review, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act.

C. Arm's-Length Test

MS Galati reported that it made sales in the home market to affiliated and unaffiliated customers. The Department did not require MS Galati to report its affiliated party's downstream sales because these sales represented less than five percent of total home-market sales. We excluded sales to affiliated customers in the home market not made in the ordinary course of trade from our analysis pursuant to section 773(a)(1)(B)(i) of the Act. To determine whether sales to affiliated customers were made in the ordinary course of trade, we tested whether sales to each affiliated customer were made at arm's length. As such, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing

adjustments, movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length, consistent with *Antidumping Proceedings—Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

D. Price-to-Price Comparisons

We based normal value on the home-market sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's-length test. We adjusted gross unit price for reported freight revenue. We made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for imputed credit, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the CEP transaction. See also 19 CFR 351.412. The normal-value level of trade is the level of the starting-price sales in the comparison market or, when normal value is based on constructed value, the level of the sales from which we derive selling, general and administrative expenses and profits. For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1).

To determine whether home-market sales are at a different level of trade than CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home-market sales are at a different level of trade than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset). See *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In this review, we obtained information from MS Galati regarding the marketing stages involved in sales to the reported home and U.S. markets. MS Galati reported that it sells to unaffiliated distributors and end-users in Romania as well as to affiliated end-users for consumption and affiliated distributors. In the United States, MS Galati had sales to an affiliate, INA, that resold the merchandise to unaffiliated customers.

MS Galati reported one level of trade in the home market with the following three channels of distribution: 1) direct sales to customers; 2) consignment sales; 3) sales through its affiliated warehouse. Home-market sales were made to two classes of customers, end-users and distributors. Along with MS Galati's home-market sales of merchandise stored at its affiliated warehouse, MS Galati also had sales to affiliated end-users for consumption. Based on our review of evidence on the record, we find that home-market sales through the three channels of distribution to both customer categories, whether affiliated or not, were substantially similar with respect to selling functions and stages of marketing. MS Galati performed the same selling functions at the same level for sales to all home-market customers. Accordingly, we preliminarily find that MS Galati had only one level of trade for its home-market sales.

MS Galati reported one CEP level of trade with one channel of distribution in the United States which consists of its U.S. affiliate's direct sales to end-users and distributors of merchandise shipped directly from Romania. As such, we preliminarily determine that MS Galati made CEP sales to the United States through one channel of distribution—direct sales to end-users and distributors.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. Accordingly, we reviewed the selling functions and services MS Galati reported it performed on CEP sales and we have determined that the selling functions performed on all CEP sales were identical. Therefore, we preliminarily determine that there is one CEP level of trade in the U.S. market.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions) to the selling functions it provided in the home market. We found that MS Galati performs more selling functions for its home-market sales than those it provides to its U.S. affiliate, INA. MS Galati reported that it provided minimal selling functions and services for the CEP level of trade and that, therefore, the home-market level of trade is more advanced than the CEP level of trade. Based on our analysis of the channels of distribution and MS Galati's selling functions for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home-market level of trade is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides many selling functions in the home market at a higher level of service as compared to selling functions it performed for its CEP sales.

We examined whether a level-of-trade adjustment or CEP offset may be appropriate. In this case, MS Galati sold at one level of trade in the home market. Therefore, there is no information available to determine a pattern of consistent price differences between the sales on which we base normal value and the home-market sales at the level of trade of the export transaction, in accordance with our normal methodology as described above. See 19 CFR 351.412(d). We do not have record information which would allow us to examine pricing patterns based on MS Galati's sales of other products, and there are no other respondents or other record information on which such as analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a level-of-trade adjustment but the level of trade in the home market is at a more advanced state of distribution than the level of trade of the CEP transactions, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

To calculate the CEP offset, we deducted the home-market indirect selling expenses from normal value for home-market sales that we compared to U.S. CEP sales. As such, we limited the deduction for home-market indirect selling expenses by the amount of the

indirect selling expenses we deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the weighted-average dumping margin for MS Galati during the period November 1, 2003, through October 31, 2004, is 0.94 percent.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held at the main Department building. We will notify parties of the exact date, time, and place for any such hearing.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue and a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days from the date of publication of these preliminary results.

Assessment

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), we will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. To determine whether the duty-assessment rate covering the period is *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated an importer-specific assessment *ad valorem* rate by aggregating the dumping margins calculated for all U.S. sales to the sole importer of MS Galati's subject merchandise and dividing this amount by the total entered value of the sales to that importer. Where the importer-specific *ad valorem* rate is greater than *de minimis* and because the respondent has reported reliable entered values, we will instruct CBP to apply the assessment rate to the entered value of the importer's entries during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of certain hot-rolled carbon steel flat products from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced or exported by MS Galati, the cash-deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original antidumping duty investigation, but the manufacturer is, the cash-deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous administrative review or in the original less-than-fair-value investigation, the cash-deposit rate will be 17.84 percent, the ''All Others'' rate made effective on June 14, 2005. See *Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary 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 these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 30, 2005.

Stephen J. Claeys,

Assistant Secretary for Import Administration.

[FR Doc. E5–7081 Filed 12–7–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2005.

FOR FURTHER INFORMATION CONTACT: Elfi Blum-Page or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2005, the Department published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSS) from France for the period of July 1, 2003, through June 30, 2004 (*see Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 70 FR 45668 (August 8, 2005) (*Preliminary Results*)). The current deadline for the final results of this review is December 6, 2005.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the final results in an administrative review within 120 days of the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act

allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

Due to the complex nature of certain issues raised in the parties' comments to the *Preliminary Results* related to the calculation of specific adjustments (such as warranty expenses) and assessment rates, additional time is required to complete our analysis. Therefore, the Department finds that it is not practicable to complete the review within the original time frame. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the final results of the review until no later than January 30, 2006, or 175 days from the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: December 2, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7082 Filed 12–7–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas (TRQ) on the Import of Certain Worsted Wool Fabrics for Calendar Year 2006

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2006 worsted wool fabric tariff rate quota.

SUMMARY: The Department of Commerce (Department) has determined the allocation for Calendar Year 2006 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000 (Pub. L. No. 106–200), as amended by the Trade Act of 2002 (Pub. L. 107–210) and the Miscellaneous Trade Act of 2004 (Pub. L. 108–249). The companies that are being provided an allocation are listed below.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

BACKGROUND:

Title V of the Trade and Development Act of 2000 as amended by the Trade Act of 2002 and the Miscellaneous Trade Act of 2004 creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTSUS) heading 9902.51.11), the reduction in duty is limited to 5,500,000 square meters in 2006. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTSUS heading 9902.51.15), the reduction is limited to 5,000,000 square meters in 2006. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas.

The Miscellaneous Trade Act of 2004 also authorized Commerce to allocate a new HTS category, HTS 9902.51.16. This HTS refers to worsted wool fabric with average fiber diameter of 18.5 microns or less. The amendment further provides that HTS 9902.51.16 is for the benefit of persons (including firms, corporations, or other legal entities) who weave worsted wool fabric in the United States. For HTS 9902.51.16, the reduction in duty is limited to 2,000,000 square meters in 2006.

On January 22, 2001 the Department published interim regulations establishing procedures for applying for, and determining, such allocations (66 FR6459) and (15 CFR 335). These interim regulations were adopted, without change, as a final rule published on October 24, 2005 (70 FR 61363). On September 2, 2005, the Department published notices in the Federal Register (70 FR 52365) and (70 FR 52366) soliciting applications for an allocation of the 2006 tariff rate quotas with a closing date of October 3, 2005. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 12 firms. The Department received timely applications for the HTS 9902.51.15 tariff rate quota from 15 firms. The Department received timely applications for the HTS 9902.51.16 tariff rate quota from 1 firm. All applicants were determined eligible for an allocation. Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

FIRMS THAT RECEIVED ALLOCATIONS

FIRMS THAT RECEIVED ALLOCATIONS: HTS 9902.51.11, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER GREATER THAN 18.5 MICRON, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.60 AND 5112.19.95).

Amount allocated: 5,500,000 square meters.

Companies Receiving Allocation:

Adrian Jules LTD–Rochester, NY
Hartmarx Corporation–Chicago, Ill
Hartz & Company, Inc.–Frederick, MD
Hugo Boss Cleveland, Inc–Brooklyn, OH
JA Apparel Corp.–New York, NY
John H. Daniel Co.–Knoxville, TN
Majer Brands Company, Inc.–Hanover, PA
Saint Laurie Ltd–New York, NY
Sewell Clothing Company, Inc.–Bremen, GA
Southwick Clothing L.L.C.–Lawrence, MA
Toluca Garment Company–Toluca, IL
The Tom James Co.–Franklin, TN

HTS 9902.51.15, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING SUITS, SUIT-TYPE JACKETS, OR TROUSERS (PROVIDED FOR IN SUBHEADING 5112.11.30 AND 5112.19.60).

Amount allocated: 5,000,000 square meters.

Companies Receiving Allocation:

Adrian Jules LTD–Rochester, NY
Elevee Custom Clothing–Van Nuys, CA
Retail Brand Alliance, Inc. d/b/a Brooks Brothers–New York, NY
Hartmarx Corporation–Chicago, IL
Hartz & Company, Inc.–Frederick, MD
Hugo Boss Cleveland, Inc.–Brooklyn, OH
JA Apparel Corp.–New York, NY
John H. Daniel Co.–Knoxville, TN
Majer Brands Company, Inc.–Hanover, PA
Martin Greenfield–Brooklyn, NY
Saint Laurie Ltd–New York, NY
Sewell Clothing Company, Inc.–Bremen, GA
Southwick Clothing L.L.C.–Lawrence, MA
Toluca Garment Compan–Toluca, IL
The Tom James Co.–Franklin, TN

HTS 9902.51.16, FABRICS, OF WORSTED WOOL, WITH AVERAGE FIBER DIAMETER OF 18.5 MICRON OR LESS, CERTIFIED BY THE IMPORTER AS SUITABLE FOR USE IN MAKING MEN'S AND BOYS SUITS (PROVIDED FOR IN SUBHEADING 5112.11.30 AND 5112.19.60).

Amount allocated: 2,000,000 square meters.

Companies Receiving Allocation:

Warren Corporation.–Stafford Springs, CT

Dated: December 2, 2005.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc. E5–7080 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Response to Office Action and Preliminary Amendment Forms

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 6, 2006.

ADDRESSES: You may submit comments by any of the following methods:

E-mail: Susan.Brown@uspto.gov. Include ''0651–0050 comment'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Brown.

Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Sharon Marsh, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, United States Patent and Trademark Office (USPTO), P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8900, or by e-mail at *Sharon.Marsh@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to 15 U.S.C. 1051 et. seq and Chapter 37 of the Code of Federal Regulations, the United States Patent and Trademark Office (USPTO) issues Office Actions to applicants that have applied for a trademark application requesting additional information that is required before the issuance of a registration that was not provided with the initial submission of the application. Also, the USPTO may determine that the mark may not be entitled to registration, pursuant to one or more provisions of the Act. In such cases, the USPTO may issue Office Actions advising applicants of the refusal to register the mark. Applicants reply to these Office Actions by providing the required information and/or by putting forth legal arguments as to why the refusal of registration should be withdrawn.

Additionally, applicants may supplement their applications by providing additional information voluntarily. When such information is provided before the USPTO has reviewed the application, the submission is in the nature of a Preliminary Amendment.

The forms in this collection are available only in electronic format through the Trademark Electronic Application System (TEAS). The Response to Office Action form may be used to reply to an Office Action that was issued in connection with either an application for registration or after the submission of a Statement of Use.

II. Method of Collection

By electronic transmission.

III. Data

OMB Number: 0651–0050.

Form Number(s): PTO Forms 1957 and 1966.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other non-profit; not-for-profit institutions; farms; the Federal Government; and state, local or tribal government.

Estimated Number of Respondents: 109,152 responses per year.

Estimated Time Per Response: The USPTO estimates that the public will require approximately 10 minutes (0.17 hours) to supply the information requested in the Office Action, and approximately 10 minutes (0.17 hours) to supply the information for the Preliminary Amendment. Completion times may vary, depending upon the nature and amount of information requested in a particular Office Action.

Estimated Total Annual Respondent Burden Hours: 18,555 burden hours per year.

Estimated Total Annual Respondent Cost Burden: $5,306,730. Using the professional hourly rate of $286 for associate attorneys in private firms, the USPTO estimates $5,306,730 per year for salary costs associated with respondents. However, it is noted that a respondent is not required to retain an attorney to assist in responding to an Office Action. This collection contains two electronic forms.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Response to an Action Form	10 minutes	100,155	17,026
Preliminary Amendment	10 minutes	8,997	1,529
Total		109,152	18,555

Estimated Total Annual Non-hour Respondent Cost Burden: $0. There are no maintenance costs associated with this information collection. Capital start-up costs of $900 reported in the collection approved by OMB on April 18, 2003 are being deleted. The USPTO no longer reports the cost of purchasing scanners and digital cameras as part of the capital start-up costs of a collection, so the $900 is being deleted from the inventory. There are no filing fees or postage costs associated with either a Response to Office Action or a Preliminary Amendment. However, filing fees that were incurred but not paid when another document was submitted may be provided together

with Responses to Office Actions or Preliminary Amendment. The USPTO calculates these fees as part of another collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2005.

Susan K. Brown,

Records Officer, U.S. Patent and Trademark Office, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. E5–7037 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Fastener Quality Act Insignia Recordal Process

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 6, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov*. Include ''0651–0028 comment'' in the subject line of the message.
- Fax: 571–273–0112, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Sharon Marsh, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, U.S. Patent and Trademark Office, PO Box 1451, Alexandria, VA 22313–1451; by telephone at 571–272–8900; or by e-mail at *Sharon.Marsh@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under Section 5 of the Fastener Quality Act (FQA), 15 U.S.C. 5401 et seq. (as amended by Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34), certain industrial fasteners are required to bear an insignia identifying the manufacturer. The manufacturers of these fasteners are required to record the insignia with the USPTO to ensure that a fastener can be traced back to its manufacturer. The procedures for the recordal of insignias under the FQA are set forth in 15 CFR 280.300–280.326.

It is mandatory for manufacturers of fasteners covered by the FQA to submit an application to the USPTO for recordal of an insignia on the Fastener Insignia Register. The insignia may be either a unique alphanumeric designation that the USPTO will issue upon request, or a trademark that is either (1) registered at the USPTO or (2) the subject of an application to obtain a registration. Upon successful application for recordal of a fastener insignia, the USPTO will issue a Certificate of Recordal, which remains active for five years and then must be renewed. If ownership of a recorded alphanumeric designation is assigned to another entity, the designation becomes ''inactive'' and the new owner must submit an application in order to reactivate the designation within six months of the date of assignment. If the recordal is based on a trademark application or registration that is subsequently assigned to a new owner, the recordal becomes ''inactive'' and cannot be reactivated. Instead, the new owner of the trademark application or registration must apply for a new recordal.

This information collection includes one form, the Application for Recordal of Insignia or Renewal/Reactivation of Recordal Under the Fastener Quality Act (PTO–1611), which provides manufacturers with a convenient way to submit a request for the recordal of a fastener insignia or to renew or reactivate an existing Certificate of Recordal. Use of Form PTO–1611 is not mandatory, and applicants may instead prepare requests for recordal using their own format.

The public uses this information collection to comply with the insignia recordal provisions of the FQA. The USPTO uses the information in this collection to maintain the Fastener Insignia Register, which is open to public inspection. The public may download the Fastener Insignia Register from the USPTO Web site or purchase printed copies from the USPTO.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0028.

Form Number(s): PTO–1611.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 37 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to gather the necessary information, prepare the form, and submit the request for recordal or renewal of a fastener insignia to the USPTO.

Estimated Total Annual Respondent Burden Hours: 6 hours per year.

Estimated Total Annual Respondent Cost Burden: $486 per year. The USPTO expects that the information in this collection will be prepared by paraprofessionals at an estimated rate of $81 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be $486 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Application for Recordal of Insignia or Renewal/Reactivation of Recordal Under the Fastener Quality Act (PTO–1611).	10 minutes	37	6
Total		37	6

Estimated Total Annual Non-hour Respondent Cost Burden: $863. There are no capital start-up costs, recordkeeping costs, or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

Under 37 CFR 2.7, the filing fee for a recordal of fastener insignia or a renewal of an insignia recordal is $20. The USPTO estimates that it will receive 37 recordals or renewals of fastener insignia per year for a total of $740 in filing fees. If a manufacturer submits a renewal after the expiration date but within six months of that date, then the manufacturer must pay an additional $20 late renewal surcharge. The USPTO estimates that approximately 5 of the estimated 37 responses per year will be late renewals that incur the surcharge, for a total of $100 in additional charges. Therefore, the total estimated filing costs for this collection will be $863 per year.

The public may submit the information for this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first-class postage cost for a mailed submission will be 63 cents, for a total postage cost of $23 per year.

The total non-hour respondent cost burden for this collection in the form of filing costs and postage costs is estimated to be $863 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 1, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. E5–7062 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

December 2, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing limits.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Bureau of Customs and Border Protection Web site (*http://www.cbp.gov*), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on November 19, 2004, December 31, 2004, and February 7, 2005, between the Governments of the United States and Ukraine establishes limits for certain wool textile products, produced or manufactured in Ukraine and exported during the period beginning on January 1, 2006 and extending through December 31, 2006.

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2006 limits. The limit for Category 435 is being reduced for carryforward applied to the 2005 limit.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 2, 2005.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of July 22, 1998, as amended and extended by exchange of notes on November 19, 2004, December 31, 2004, and February 7, 2005, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 2006, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 2006 and extending through December 31, 2006, in excess of the following levels of restraint:

Category	Twelve-month limit
435	103,680 dozen.
442	17,575 dozen.
444	76,158 numbers.
448	76,158 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral

agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in the above categories exported during 2005 shall be charged to the applicable category limits for that year (see directive dated February 17, 2005) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner, Bureau of Customs and Border Protection should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. E5–7078 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition Under the North American Free Trade Agreement (NAFTA)

December 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for nonwoven wipes made from viscose rayon staple fiber.

SUMMARY: On October 28, 2005, the Chairman of CITA received a request from Alston & Bird LLP, on behalf of Polymer Group, Inc. (PGI), alleging that rayon viscose staple fiber, classified in subheading 5504.10 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for nonwoven wipes classified under HTSUS subheadings 5603.91, 5603.92, 5603.93 and 5603.94 should be modified to allow the use of non-North American viscose rayon staple fiber.

The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether woven fabrics of the type described below can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **January 9, 2006** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. *See* Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491 (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. SAA at 491. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. *See* section 202(q) of the NAFTA Implementation Act.

On October 28, 2005 the Chairman of CITA received a request from Alston & Bird LLP, on behalf of Polymer Group, Inc. (PGI), alleging that rayon viscose staple fiber, classified in subheading 5504.10 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for nonwoven wipes classified under HTSUS subheadings 5603.91, 5603.92, 5603.93 and 5603.94 should be modified to allow the use of non-North American viscose rayon staple fiber. The petitioner requested that the modification be effective for entries made on or after October 1, 2005, the date they alleged all rayon production ended in the United States.

CITA is soliciting public comments regarding this request, particularly with respect to whether viscose rayon staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than **January 9, 2006.** Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that viscose rayon staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces fiber that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-

confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–7077 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

December 2, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for Public Comments concerning a request for modification of the NAFTA rules of origin for chenille fabric of acrylic fiber.

SUMMARY: On October 24, 2005 the Chairman of CITA received a request from Quaker Fabrics alleging that certain acrylic staple fibers, classified in subheading 5503.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for chenille fabric classified under HTSUS 5801.36.0000 should be modified to allow the use of non-North American acrylic staple fiber.

The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by **January 9, 2006.** to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin J. Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2818.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. *See* Section 202(q) of the NAFTA Implementation Act. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. NAFTA Implementation Act, SAA, H. Doc. 103-159, Vol. 1, at 491 (1993). The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. SAA at 491. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification. *See* section 202(q) of the NAFTA Implementation Act.

On October 24, 2005 the Chairman of CITA received a request from Quaker Fabrics alleging that certain acrylic staple fibers, not carded, combed, or otherwise processed for spinning, classified in subheading 5503.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the NAFTA rule of origin for chenille fabric classified under HTSUS 5801.36.0000 should be modified to allow the use of non-North American acrylic staple fiber.

CITA is soliciting public comments regarding this request, particularly with respect to whether acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than **January 9, 2006.** Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that acrylic staple fiber can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer stating that it produces acrylic fiber that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–7079 Filed 12–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2006 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2006 under the TRICARE Mental Health Per Diem

Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2006.

EFFECTIVE DATE: The fiscal year 2006 rates contained in this notice are effective for services occurring on or after October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Christine Covie, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3841.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993 (58 FR 35–400), set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2006, Medicare has recommended a rate of increase of 3.8 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2006 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2005 updated by 3.8 percent for FY 2006. Partial hospitalization rates for full day and half day programs will also be updated by 3.8 percent for FY 2006. The cap amount for high volume hospitals and units will also be updated by the 3.8 percent for FY 2006. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.8 percent for FY 2006. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment is 71.035 percent for FY 2006. The following reflect an update of 3.8 percent for FY 2006:

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States census region	Rate [1]
Northeast:	
New England	$662
Mid-Atlantic	637
Midwest:	
East North Central	550
West North Central	519
South:	
South Atlantic	656
East South Central	701
West South Central	598
West:	
Mountain	597
Pacific	705
Puerto Rico	450

[1] Wage portion of the rate, subject to the area wage adjustment 71.035 percent.

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $175 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2005.

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $832 per day for FY 2006.

The following reflect an update of 3.8 percent for FY 2006.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2006

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$266	200
Mid-Atlantic (NY, NJ, PA)	288	216
Midwest:		
East North Central (OH, IN, IL, MI, WI)	253	190
West North Central (MN, IA, MO, ND, SD, NE, KS)	253	190
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	273	205
East South Central (KY, TN, AL, MS)	295	221
West South Central (AR, LA, TX, OK)	295	211
West		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	298	224
Pacific (WA, OR, CA, AK, HI)	292	219
Puerto Rico	190	143

The above rates are effective for services rendered on or after October 1, 2005.

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23766 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of the Defense Acquisition Performance Assessment Project Meetings

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 96–463, notice is hereby given that the Defense Acquisition Performance Assessment (DAPA) Project will hold a public meeting at the Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington, VA 22209, on December 14, 2005.

Purpose: Final DAPA Project Panel Meeting. Panel members will present to the public the Panel's recommendations for acquisition system performance improvements for the Department of Defense. Any interested citizens are encouraged to attend the meetings open

to the public, subject to the availability of space.

DATES: December 14, 2005, 2 p.m.–4 p.m.

This notice is being published in less than the 15 calendar days required by law due to short notice changes in panel and DAPA staff schedules.

Location: Anteon Conference Center, 1560 Wilson Blvd., Suite 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit comments must contact: Lt Col Rene Bergeron, Assistant Director of Staff, Defense Acquisition Performance Assessment Project, 1010 Defense Pentagon, Rm 3A873, Washington, DC 20330–1670. Telephone: (703) 697–3420. DSN: 225–3420. Fax: (703) 697–3511. *rene.bergeron@pentagon.af.mil*.

Dated: December 2, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23767 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1874; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records; correction.

SUMMARY: On Wednesday, November 23, 2005 (70 FR 70789), the Department of Defense published a System of Records Privacy Act notice. This notice corrects the telephone number for the **FOR FURTHER INFORMATION CONTACT** for that notice. The telephone number for Ms. Juanita Irvin is corrected to read 703–696–4940. All other information remains unchanged.

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–23781 Filed 12–7–05; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 9, 2006, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 30, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

A00025–55 AHRC

SYSTEM NAME:

Freedom of Information Act Program Files (September 23, 2004, 69 FR 57005).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete system identifier and replace with: ''A0025–55 OAA''.

* * * * *

A0025–55 OAA

SYSTEM NAME:

Freedom of Information Act Program Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requets to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12958, National Classified Security Information, as amended. Official mailing addresses are published as an apendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12958, National Classified Security Information, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; Army Regulation 25–55, The Department of the Army Freedom of Information Act Program; and E.O. 12958, National Classified Security Information, as amended.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12958, National Classified Security Information, as amended, including appeals from denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password to protect the system from unauthorized access. User identification and passwords are changed at random times.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 6 years; and if appealed, records are retained 6 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/ Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide enough information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA action, exempt materials from 'other' systems of records may in turn become part of the case records in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this FOIA case record, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary systems of records which they are a part.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 05–23763 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 9, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 30, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

A0340–21 AHRC

SYSTEM NAME:

Privacy Case Files (September 23, 2004, 69 FR 57005).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete system identifier and replace with: ''A0340–21 OAA''.

* * * * *

A0340–21 OAA

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, the record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and

amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, the Privacy Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 3013, Secretary of the Army; and Army Regulation 340–21, The Army Privacy Program.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requester are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Records Management and Declassification Agency, ATTN: Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the U.S. Army Records Management and Declassification Agency, Freedom of Information/Privacy Division, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3905.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a Privacy Act (PA) action, exempt materials from 'other' systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those 'other' systems of records are entered into these PA case records, the Department of the Army hereby claims the same exemptions for the records as they have in the original primary systems of records which they are a part. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 05–23764 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 9, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6497.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 2, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 2, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files (April 4, 2003 68 FR 16484).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add the following: ''entrance applications, date of birth, home address and telephone number, and video tapes of the interview.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add the following: ''and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Add the following: ''and electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000.''

NOTIFICATION PROCEDURE:

Delete address and replace with: ''Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000.''

RECORD SOURCE CATEGORIES:

Delete address and replace with: ''Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000.''

RECORD ACCESS PROCEDURE:

Delete address and replace with: ''Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000.''

* * * * *

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files.

SYSTEM LOCATION:

U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the Regular Army who have requested a waiver of moral eligibility for a juvenile or adult felony; determination of medical/Military Occupational Specialty qualifications, determination of Stripes for Skills qualification; exceptions to policy; determination of enlistment eligibility, and prior service personnel requesting a mental retest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, evaluation documents, decisions, replies concerning approval/disapproval, entrance applications, date of birth, home address and telephone number, and video tapes of the interview.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 504, Persons not qualified; Army Regulation 601–210, Regular Army and Army Reserve Enlistment Program, and E.O. 9397 (SSN).

PURPOSE(S):

To make determinations on the moral, medical, and administrative waivers of applicants for the Regular Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and in electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need-to-know, and who are properly trained and screened. In addition, access to all records is restricted to designated individuals whose official duties dictate an official need-to-know. Information in automated media is further protected from unauthorized access in locked rooms.

RETENTION AND DISPOSAL:

Destroyed after 2 years, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the Commander, U.S. Army Recruiting Command, ATTN: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, employers, probation officials, law enforcement officials, school officials, personal references, transcripts, medical records, Army records and report.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 05–23780 Filed 12–7–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Number 6,121,911 entitled ''Data gathering circuit having reduced power consumption'', Navy Case Number 77551, Inventors Alloca et al, Issue date September 29, 2000. U.S. Patent Number 6,125,270 entitled ''Verification system for transmitters and command tone generators'', Navy Case Number 78452, Inventor Prockup, Issue date September 26, 2000. U.S. Patent Number 6,450,449 entitled ''Crashworthy seat'', Navy Case Number 79150, Inventors Podob et al, Issue date September 17, 2002. U.S. Patent Number 6,484,072 entitled ''Embedded terrain awareness warning system for aircraft'', Navy Case Number 83144, Inventors Anderson et al, Issue date November 19, 2002. U.S. Patent Number 6,557,570 entitled ''Portable apparatus for cleaning a conduit and method for cleaning a conduit'', Navy Case Number 82426, Inventors Gierbolini et al, Issue date May 06, 2003. U.S. Patent Number 6,590,377 entitled ''Narrow band frequency detection circuit'', Navy Case Number 79123, Inventor Prockup, Issue date July 08, 2003. U.S. Patent Number 6,616,097 entitled ''Reconfigurable reconnaissance pod system'', Navy Case Number 82920, Inventor Hilbert, Issue date September 09, 2003. U.S. Patent Number 6,621,836 entitled ''Tunable multi-frequency vertical cavity surface emitting laser'', Navy Case Number 82243, Inventor Karwacki, Issue date September 16, 2003. U.S. Patent Number 6,659,963 entitled ''Apparatus for obtaining temperature and humidity measurements'', Navy Case Number 82970, Inventors Kaufman et al, Issue date December 09, 2003. U.S. Patent Number 6,667,262 entitled ''Self-lubricating ceramic composites'', Navy Case Number 74503, Inventors Agarwala et al, Issue date December 23, 2003. U.S. Patent Number 6,760,571 entitled ''Automatic frequency deviation detection and correction apparatus'', Navy Case Number 79124, Inventor Prockup, Issue date July 06, 2004. Navy Case Number 76519 entitled ''Method for reducing hazards'', Inventor Gill, U.S. Application Number 11/220,189 filed on September 01, 2005. Navy Case Number 85000 entitled ''Just in time wiring information system'', Inventors Edwards et al, U.S. Application Number 11/251,535 filed on September 29, 2005. Navy Case Number 95904 entitled ''Oleaginous corrosion resistant composition'', Inventors Arafat et al, Filed on October 27, 2005. Navy Case Number 96569 entitled ''Method for fabrication of a polymeric, conductive optical transparency'', Inventors Coughlin et al, U.S. Application Number 11/251,539 filed on October 03, 2005. Navy Case Number 96766 entitled ''Personal portable environmental control system'', Inventor Askew, U.S. Application Number 11/250,710 filed on October 03, 2005. U.S. Patent Number 5,540,218 entitled ''Respiratory system particularly suited for aircrew use'', Navy Case Number 76043, Inventors Jones et al, Issue date July 30, 1996. U.S. Patent Number 5,916,372 entitled ''Non-solvent, general use exterior aircraft cleaner'', Navy Case Number 79444, Inventors Bevilacqua et al, Issue date June 29, 1999.

ADDRESSES: Request for data and inventor interviews should be director to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670, 301–342–5586 or E-Mail *Paul.Fritz@navy.mil.*

DATES: Request for data, samples, and inventor interviews should be made prior to 30 January 2006.

FOR FUTHER INFORMATION CONTACT: Mr. Hans Kohler, Office of Research and Technology Applications, Building 150/2, Naval Air Warfare Center Aircraft Div, Lakehurst, NJ 08733–5060, 732–323–2948, *Hans.Kohler@navy.mil* or Mr. Paul Fritz, Office of Research and Technology Applications, Building 304; Room 107, Naval Air Warfare Center Aircraft Div, 22541 Millstone Rd, Patuxent River, MD 20670, 301–342–5586, *Paul.Fritz@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Building 304; Room 107, 22541 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensee's, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT application may be filed for each of the patents as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 2, 2005.

Eric Mcdonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E5–7042 Filed 12–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Expression Pathology, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Expression Pathology, Inc., a revocable, nonassignable, exclusive license to practice in the field of consumables for laser microdissection of human tissue samples for life science research, therapeutics and clinical diagnostic applications in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 6,905,738: Generation of Viable Cell Active Biomaterial Patterns by Laser Transfer, Navy Case No. 79,702.//U.S. Patent No. 6,936,311: Generation of Biomaterial Microarrays by Laser Transfer, Navy Case No. 82,621.//U.S. Patent Application Serial No. 10/863,833: Biological Laser Printing for Tissue Microdissection via Indirect Photon-Biomaterial Interactions, Navy Case No. 96,075.//U.S. Patent Application Serial No. 10/863,850: Biological Laser Printing for Tissue Microdissection via Indirect Photon-Biomaterial Interactions, Navy Case No. 84,621 and any continuations, divisionals or re-issues thereof.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than December 23, 2005.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083.

Due to U.S. Postal delays, please fax 202–404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: December 2, 2005.

Eric Mcdonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E5–7049 Filed 12–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting 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 February 6, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting 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: December 2, 2005.

Leo Eiden,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Performance Report for the Child Care Access Means Parents in School Program—18-Month/36-Month Reports.

Frequency: 18-months and 36-months after first receiving grant funds.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 88.

Burden Hours: 704.

Abstract: The Child Care Access Means Parents in School provides grants to institutions of higher education to enable institutions to provide child care to low-income students. Grantees are required to file reports 18-months and 36-months after they first receive funding. The reports are used to evaluate grantees' performance.

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 2954. 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 Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7033 Filed 12–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 January 9, 2006.

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 Acting 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: December 2, 2005.

Leo Eiden,

Acting Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office for Civil Rights

Type of Review: New.

Title: Assurance of Compliance Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 17,000.

Burden Hours: 5,667.

Abstract: The Boy Scouts of America Equal Access Act (Boy Scouts Act), part of No Child Left Behind, and its implementing regulations (which are pending OMB final approval) create new enforcement responsibilities for OCR. To meet these responsibilities, OCR needs to collect assurances of compliance with the Boy Scouts Act, and proposes to do so by amending an existing document that was used to collect assurances of compliance with the other civil rights laws (Title VI, Title IX, Section 504, Age Discrimination Act) enforced by OCR. The respondents are State educational agencies (SEAs) and local educational agencies (LEAs). If an SEA or LEA receives funds made available through Education and violates the Boy Scouts Act, OCR and the Department of Justice can use the signed assurance of compliance in an enforcement proceeding. To view the Notice of Proposed Rulemaking (NPRM), please refer to **Federal Register**, Vol. 69, No. 201, dated Tuesday, October 19, 2004, Page 61556.

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 2952. 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. E5–7034 Filed 12–7–05; 8:45 am]

BILLING CODE 4000–01–P

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 February 6, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 30, 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: Trends in International Mathematics and Science Study (TIMSS): 2007.

Frequency: One time.

Affected Public: Individuals or household; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 25,825. Burden Hours: 20,830.

Abstract: The TIMSS 2007 will assess the mathematical and science knowledge of students in over 60 participating countries. This is the fourth cycle of TIMSS studies. Previous TIMSS were conducted in 1994–1995, 1999, and 2003. TIMSS 2007 will go to fourth and eighth graders in the United States. In addition to the assessments, in each participating country, the selected students and their 4th grade teachers and 8th grade science and math teachers, and administrators of the selected schools will also fill out background questionnaires to learn about curricula, instruction, home context, and school characteristics and policies.

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 2946. 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. E5–7035 Filed 12–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2006; Correction.

SUMMARY: On November 8, 2005, we published in the **Federal Register** (70 FR 67675) a notice inviting applications for new awards for FY 2006 for the Training and Information for Parents of Children with Disabilities—Parent Training and Information Centers competition. The notice contained incomplete funding information and did not include Nebraska among the States for which the Department will accept applications for a 5-year award to establish a parent training and information center (PTI Center). To create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Department makes awards in five-year cycles to each State. Nebraska should have been included in the list of States for which the Department intends to fund one PTI Center to serve the entire State in FY 2006.

On page 67675, third column, and page 67677, first column, the following corrections are necessary: (1) Under *Estimated Available Funds*, the estimated funding amount for the Parent Training and Information Centers competition is corrected to read ''$5,417,915''; (2) the *Estimated Average Size of Awards* is corrected to read ''$285,153''; and (3) the *Estimated Number of Awards* is corrected to read ''19''.

In addition, on page 67677, second column, the second and fourth paragraphs are corrected to include Nebraska in (1) the list of States for which we will be accepting applications for 5-year awards, and (2) the list of States for which one award may be made to a qualified applicant for a PTI Center to serve the *entire* State. The chart on page 67677, third column, is also corrected to include Nebraska with a maximum funding amount of $230,625.

FOR FURTHER INFORMATION CONTACT: Donna Fluke, U.S. Department of Education, 400 Maryland Avenue, SW., room 4059, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7345.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 5, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7096 Filed 12–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of Charter Reestablishment.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 1, 2007. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and to all segments of the oil and natural gas industries.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all segments of the oil and natural gas industries and related interests, from all sections of the United States, and from large and small companies. The Council also includes members representing academia, research and environmental groups, State governments and organizations, and Tribal organizations. Membership and representation of all pertinent interests are determined in accordance with the requirements of the Federal Advisory Committee Act and its implementing regulations.

The reestablishment of the Council has been determined essential to the conduct of the Department's business, and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Council will operate in accordance with the Federal Advisory Committee Act and its implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at (202) 586–3279.

Issued at Washington, DC, on December 1, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E5–7068 Filed 12–7–05; 8:45 am]

BILLING CODE 6450–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project

AGENCY: Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the document, Draft Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project (DOE/EIS–0357), for public comment. The draft environmental impact statement (EIS) analyzes the potential

environmental consequences of providing federal funding for the design, engineering, construction, and operation of the first power facility in the United States to use coal waste as feed to a gasification facility that subsequently generates fuel gas for clean power, thermal energy, and clean liquid fuels production. The project would be constructed at an existing power plant site in Gilberton, Schuylkill County, Pennsylvania.

The Department prepared this draft EIS in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations that implement the procedural provisions of NEPA (40 CFR parts 1500–1508), and the DOE procedures implementing NEPA (10 CFR part 1021).

DOE's proposed action (and preferred alternative) is to provide cost-shared funding to design, construct, and operate a new plant to demonstrate coproduction of 41 MW of electricity for export, steam, and over 5,000 barrels-per-day of clean liquid hydrocarbon products (primarily diesel fuel and naptha). DOE may also provide a loan guarantee, pursuant to the Energy Policy Act of 2005, to guarantee a portion of the private sector financing for the project. The demonstration plant would use a gasifier to convert coal waste to synthesis gas, which would be conveyed to Fischer-Tropsch (F–T) liquefaction facilities for production of liquid fuels and to a combined-cycle power plant. The demonstration facilities, to be constructed in Gilberton, Schuylkill County, Pennsylvania, would process up to 4,700 tons per day of coal waste (anthracite culm). The potential environmental impacts of this action are evaluated in this Draft EIS. The Draft EIS also analyzed the No Action Alternative, under which DOE would not provide cost-shared funding to demonstrate the commercial-scale integration of coal gasification and F–T synthesis technology to produce electricity, steam and liquid fuels. Under the No-Action Alternative, it is reasonably foreseeable that no new activity would occur.

DATES: DOE invites the public to comment on the Draft EIS during the public comment period, which ends February 8, 2006. DOE will consider all comments postmarked or received during the public comment period in preparing the Final EIS, and will consider late comments to the extent practicable.

DOE will hold public hearings on January 9, 2006, at Shenandoah Valley Junior/Senior High School, 805 West Center Street, Shenandoah, PA 17976, 7 p.m. to 9 p.m., and on January 10, 2006, at D.H.H. Lengel Middle School, 1541 West Laurel Boulevard, Pottsville, PA 17901, and 7 p.m. to 9 p.m. Informational sessions will be held at both locations from 4 p.m. to 6:30 p.m., preceding the public hearings on the dates noted above.

ADDRESSES: Requests for information about this Draft EIS or to receive a copy of the Draft EIS should be directed to: Janice L. Bell, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, M/S 58–247A, P.O. Box 10940, Pittsburgh, PA 15236. Additional information about the Draft EIS may also be requested by telephone at (412) 386–4512, or toll-free at (866) 576–8240. The Draft EIS will be available at *http://www.eh.doe.gov/nepa/*. Copies of the Draft EIS are also available for review at the locations listed in the **SUPPLEMENTARY INFORMATION** section of this Notice.

Written comments on the Draft EIS can be mailed to Janice L. Bell, NEPA Document Manager, at the address noted above. Written comments may also be submitted by fax to: (412) 386–4806, or submitted electronically to: *jbell@netl.doe.gov*. Oral comments on the Draft EIS will be accepted only during the public hearings scheduled for the date and location provided in the **DATES** section of this Notice.

Requests to speak at the public hearings can be made by calling or writing the EIS Document Manager (see **ADDRESSES**). Requests to speak that have not been submitted prior to the hearing will be accepted in the order in which they are received during the hearing. Speakers are encouraged to provide a written version of their oral comments for the record. Each speaker will be allowed five minutes to present comments unless more time is requested and available. Comments will be recorded by a court reporter and will become part of the public hearing record.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project or the draft environmental impact statement, please contact Ms. Janice Bell as directed above. For general information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Description of Alternatives

DOE analyzed two alternatives in the Draft EIS. Under the No Action Alternative, DOE would not provide cost-shared funding to demonstrate the commercial-scale integration of coal gasification and Fischer-Tropsch (F–T) synthesis technology to produce electricity, steam and liquid fuels. Under the No-Action Alternative, it is reasonably foreseeable that no new activity would occur. No construction or operation of the proposed facilities would occur; no site preparation would be required, such as clearing of trees and other vegetation; no employment would be provided for construction workers in the area or for operators of the proposed facilities; and no resources would be required and no discharges of wastes would occur. Under the No Action Alternative, no anthracite culm, which is stacked in numerous piles as waste from previous anthracite coal mining activities, would be removed.

Under the proposed action, DOE would provide cost-shared funding to design, construct, and operate a new plant to demonstrate coproduction of 41 MW of electricity for export, steam, and over 5,000 barrels-per-day of clean liquid hydrocarbon products (primarily diesel fuel and naptha). The demonstration plant would use a gasifier to convert coal waste to synthesis gas, which would be conveyed to F–T liquefaction facilities for production of liquid fuels and to a combined-cycle power plant. The primary feedstock for the proposed facilities would be low-cost anthracite culm, which is a locally abundant, previously discarded resource (about 100 million tons) that could accommodate fuel requirements through the lifetime of the facilities. The culm would be trucked to the site from the surrounding local area. Micronized limestone, which would be used as flux added to the feedstock to lower the ash melting temperature of the culm and promote fluidity, would be trucked from mines within 100 miles of the project site.

The facilities would produce about 5,000 barrels of liquid fuels per day and 41 MW of electricity for export to the regional power grid. To reduce costs, the project would take advantage of existing local infrastructure, including rail, water, and transmission lines. The net efficiency would be about 45%, compared to about 33% for a traditional coal-fired power plant and about 40% for a state-of-the-art integrated gasification combined cycle power plant.

An average of 516 construction workers would be at the site during the construction period; approximately 1,000 workers would be required during the peak construction period. Demonstration (including performance testing and monitoring) would be conducted over a 3-year period. If the demonstration is successful, commercial operation would follow immediately. About 250 workers would be required during the demonstration, and 150 workers would be needed for long-term operations.

Proposed emissions from the facility would be small, especially for sulfur dioxide (SO_2), because most of the sulfur would be removed from the synthesis gas prior to conveying the gas to the F–T liquefaction facilities and the combined cycle power plant. The use of anthracite culm would reduce waste disposal from operating mines and allow reclamation of land currently stock piled with culm.

Availability of the Draft EIS

Copies of this Draft EIS have been distributed to Members of Congress, Federal, State, and local officials, and agencies, organizations and individuals who may be interested or affected. This Draft EIS will be available on the Internet at: *http://www.eh.doe.gov/nepa/.* Additional copies can also be requested by telephone at (412) 386–4512, or (866) 576–8240. Copies of the Draft EIS are also available for public review at the locations listed below.

Frackville Free Public Library, 56 N. Lehigh Avenue, Frackville, PA 17931.

Mahanoy City Public Library, 17–19 W. Mahanoy Avenue, Mahanoy City, PA 17948.

Pottsville Free Library, 215 West Market Street, Pottsville, PA 17901.

Issued in Washington, DC, on December 2, 2005.

Mark J. Matarrese,

NEPA Compliance Officer, Office of Fossil Energy.

[FR Doc. E5–7069 Filed 12–7–05; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, December 13, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 15, 2005 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Merit and Service Awards
Election of Officers
Final Rules and Explanation and Justification for Electioneering Communications
Final Rules and Explanation and Justification for Extension of Administrative Fines Program
Routine Administrative Matters

Person to Contact for Information: Mr. Robert Biersack, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–23838 Filed 12–6–05; 10:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 23, 2005.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Jay L. Dunlap, Lincoln, Nebraska; acting as attorney and agent on behalf of Mark Dunlap; to vote shares of New Richmond Bancorporation and thereby indirectly acquire New Richmond National Bank, both of New Richmond, Ohio.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Clara Brown,, Jasper, Tennessee; to acquire additional voting shares of General Bancshares, Inc., Jasper, Tennessee, and thereby indirectly acquire Citizens State Bank, Jasper, Tennessee.

Board of Governors of the Federal Reserve System, December 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7061 Filed 12–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. First Federal Bancorp, Columbia, Mississippi; to become a bank holding company upon the conversion of its wholly-owned thrift subsidiary, First Federal Bank for Savings, Columbia, Mississippi, to a state nonmember bank, to be known as First Southern Bank, Columbia, Mississippi.

Board of Governors of the Federal Reserve System, December 5, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7060 Filed 12–7–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Thursday, January 5, 2006 and Friday, January 6, 2006 from 9 a.m. to 5 p.m.

ADDRESSES: Marriott Crystal Gateway, 1700 Jeff Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Room 250, Rockville, MD 20852, (240) 453–8809, FAX (240) 453–8456, e-mail *jholmberg@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION: The ACBSA will meet to review progress and solicit additional input regarding numerous recommendations made during the past year. Additionally, the Committee will discuss strategies for vigilant detection and management of emerging or re-emerging infectious and non-infectious events of transfusion since it is a necessary first step toward the goal of reducing the risk of transfusion-transmitted diseases as well as disease transmission through other vital products such as bone marrow, progenitor cells, tissues, and organs. The Committee will also be asked to review current literature and hear subject matter experts on the H5NI avian flu virus and provide recommendations for preparations which should be considered for the nation's blood supply if a pandemic influenza or similar pandemic event occurs. Recommendations on the impact of a pandemic on the availability of blood, organs, and other tissue will be requested.

Public comment will be solicited at the meeting and will be limited to five minutes per speaker. Anyone planning to comment is encouraged to contact the Executive Secretary at his/her earliest convenience. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 3, 2006. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business January 3, 2006.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E5–7084 Filed 12–7–05; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–06–0009]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Disease Surveillance Program—I. Case Reports—Revision—(NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Formal surveillance of 18 separate reportable diseases has been ongoing to meet the public demand and scientific interest in accurate, consistent, epidemiologic data. These ongoing disease reports include: Active Bacterial Core Surveillance (ABCs), Creutzfeldt-Jakob Disease (CJD), Cyclospora, Dengue, Hantavirus, Idiopathic CD4+T-lymphocytopenia, Kawasaki Syndrome, Legionellosis, Lyme disease, Malaria, Plague, Q Fever, Reye Syndrome, Tick-borne Rickettsial Disease, Trichinosis, Tularemia, Typhoid Fever, and Viral Hepatitis. Tularemia is a new addition to this submission. Case report forms from state and territorial health departments enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and develop guidelines for prevention and treatment. The data collected will also be used to recommend target areas most in need of vaccinations for selected diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Total responses	Hrs/response	Total burden
ABCs	329	21	6909	10/60	1152
CJD	20	2	40	20/60	13
Cyclospora	55	10	550	15/60	138
Dengue Case Investigation	55	182	10,010	15/60	2,503
Hantavirus Pulmonary Syndrome	40	3	120	20/60	40
Idiopathic CD4+T-lymphocytopenia	10	2	20	10/60	3
Kawasaki Syndrome	55	8	440	15/60	110
Legionellosis Case Report	23	11.7	269	20/60	90
Lyme Disease Report	52	261	20,020	5/60	1,668
Malaria Case Surveillance Report	55	20	1,100	15/60	275
Plague Case Investigation Report	55	0.20	11	20/60	4
Q Fever	55	1	55	10/60	9
Reye's Syndrome Case Surveillance Report	50	1	50	20/60	17
Tick-borne Rickettsial Disease Case Report	55	18	990	10/60	165
Trichinosis Surveillance Case Report	55	0.70	39	20/60	13
Tularemia	55	2.2	121	20/60	40
Typhoid Fever Surveillance Report	55	7	385	20/60	128
Viral Hepatitis Case Record	55	200	11,000	25/60	4,583
Total					10,950

Dated: December 2, 2005.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7038 Filed 12–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06AK]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–4766 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Collection of Customer Survey Data Pertaining to the CDC Web site—New—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they need and their level of satisfaction with existing services. The Centers for Disease Control and Prevention (CDC), National Center for Health Marking (NCHM), seeks to obtain approval to conduct customer satisfaction surveys and usability tests of the CDC Web site, *http://www.cdc.gov* on an ongoing basis. By collecting customer satisfaction and Web site usability information, CDC will be enabled to serve, and respond to, the ever-changing demands of website users. These users include individuals (patients, educators, students, etc.), interested communities, partners, healthcare providers, and businesses. Survey information will augment current Web content, delivery, and design research which is used to understand the Web user, and more specifically, the CDC user community. Primary objectives are to ensure: (1) CDC's Web site meets its customer needs and (2) the Web site meets the wants, preferences, and needs of its target audiences. Findings will help to: (1) Understand the user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) determine how to align Web offerings with identified user need(s); and (4) explore methods for offering, presenting and delivering information most effectively. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
Web site Users	400,000	1	6/60	40,000

Dated: December 2, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7039 Filed 12–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06–05BF)

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Human Smoking Behavior—New—National Center for Chronic Disease and Public Health Promotion (NCDDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), in a joint venture with the National Center for Environmental Health (NCEH), proposes to conduct a 2-year laboratory-based study of human smoking behavior among established current smokers of the major styles and varieties of cigarettes consumed in the United States. This study will compare how different categories of cigarettes deliver toxic chemicals to smokers in order to further investigate the link between tobacco use and disease.

The major objective of this study is to better understand how human and cigarette variables influence the delivered dose of harmful chemicals in smoke to identify risk factors that result in adverse health effects from smoking. The smoking behavior and biomarkers of 360 smokers will be ascertained. Participants will attend two sessions on consecutive days. Solanesol levels in cigarette filter butts; carbon monoxide boost in breath; carcinogens and nicotine and its metabolites in urine; cotinine in saliva; vent-blocking (as measured by filter stain pattern and visualization of lip and finger placement on the rod using fluorescent markers); smoking topography; and breathing patterns (inhalation and exhalation volume, breath velocity and duration prior to smoking, during smoking and after smoking) will be used to measure dose based on the number of cigarettes smoked, amount of each cigarette smoked, filter vent blocking behavior, smoking behavior and puff characteristics.

Another objective of this study is to define average or ''composite'' smoking patterns across several of the most popular cigarette categories (ultralight, light, full-flavored menthol and full-flavored non-menthol) from the quantitative and observational data. All current smoking machine methodologies are ''one size fits all'' approaches to generating cigarette smoke. The composite conditions can be used to establish human behavior-based smoking machine methods for laboratory studies that require cigarette smoke for chemical or toxicological testing. Currently, laboratory scientists rely on automated smoking machines to generate cigarette smoke for chemical and toxicological testing.

Funding for this study will come from both NCCDPHP and NCEH. The Centers will share responsibilities, with administrative and technical assistance coming from NCCDPHP and laboratory support coming from NCEH.

This is a two-year study, and an estimated 500 respondents will be screened by telephone to yield 360 eligible respondents who complete both visits over the two-year study period. The total burden for each respondent who completes screening, visit 1 and visit 2 will be two hours and five minutes. The CATI screening will take five minutes. Visit 1 will take one hour, which includes a short screening item, the informed consent process, biologic sample collection (urine, saliva, and breath carbon monoxide), smoking topography, ventilation hole blocking procedure and breath measurements. Visit 2 will also take approximately one hour, which includes compensation, discussion of quit opportunities if requested, collection of cigarette butts, biologic sample collection (urine, saliva, and breath carbon monoxide), smoking topography, ventilation hole blocking procedure and breath measurements.

The following table summarizes burden on an annualized basis for 500 telephone interviews and 180 eligible respondents (one-half of the total respondents). The 180 eligible respondents estimated to complete visit 2 are the same respondents estimated to complete visit 1.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 402.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Procedure	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokers	CATI Screening	500	1	42
Eligible Smokers	Visit 1, (Day 1)	180	1	180
Eligible Smokers	Visit 2, (Day 2)	180	1	180

Dated: December 1, 2005.

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–7040 Filed 12–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0186]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Enforcement Notifications'' 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 September 14, 2005 (70 FR 54393), 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 0910–0275. The approval expires on November 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: November 30, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23744 Filed 12–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0457]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedures used for submitting a Generally Recognized as Safe (GRAS) notice stating that a particular use of a substance is not subject to the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by February 6, 2006.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of a Claim for GRAS Exemption Based on a GRAS Determination—21 CFR 170.36 and 570.36 (OMB Control Number 0910–0342)—Extension

Section 409 of the act (21 U.S.C. 348) establishes a premarket approval requirement for ''food additives;'' section 201(s) of the act (21 U.S.C. 321(s)) provides an exemption from the definition of ''food additive'' and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

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
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150
Total					900

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting requirement is for a proposed rule that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. In 1998, FDA began receiving notices that were submitted under the terms of the proposed rule. Since it began receiving notices, FDA has received 12 in 1998, 23 in 1999, 30 in 2000, 28 in 2001, 26 in 2002, 23 in 2003, 20 in 2004, and 22 to date in 2005, notices annually. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final. FDA received 23 notices in 1999, 30 notices in 2000, 28 notices in 2001, 26 notices in 2002, 23 notices in 2003, and 20 notices in 2004.

Dated: November 30, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–23747 Filed 12–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0434]

Draft Guidance for Industry and Food and Drug Administration; Nucleic Acid Based In Vitro Diagnostic Devices for Detection of Microbial Pathogens; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Nucleic Acid Based In Vitro Diagnostic Devices for Detection of Microbial Pathogens.'' This draft guidance document is being issued to provide guidance on the types of information and data to consider when preparing or reviewing premarket submissions for nucleic acid based in vitro diagnostic devices for the detection of microbial pathogens.

DATES: Submit written or electronic comments on this draft guidance by March 8, 2006.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the guidance document entitled ''Nucleic Acid Based In Vitro Diagnostic Devices for Detection of Microbial Pathogens'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or FAX your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Roxanne Shively, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0496 ext. 113.

SUPPLEMENTARY INFORMATION:

I. Background

This draft document is intended to provide a basic framework for the types of information and data that we believe should be addressed in the premarket review of a nucleic acid based device for detecting microbial pathogens. This draft guidance replaces a previously issued document entitled ''Review Criteria for Nucleic Acid Amplification-based in vitro Diagnostic Devices for Direct Detection of Infectious Microorganisms'' (June 1993). The current draft reflects changes in the technologies available for nucleic acid detection, and expanded use in clinical laboratories. The recommendations within this draft guidance apply broadly to premarket review of these in vitro diagnostic devices for detecting microbial pathogens. Enzymatic amplification may or may not be part of the applied technology.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on ''Nucleic Acid Based In Vitro Diagnostic Devices for Detection of Microbial Pathogens.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Nucleic Acid Based In Vitro Diagnostic Devices for Detection of Microbial Pathogens'' by FAX, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1560) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120 and premarket approval applications 21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

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

Dated: November 28, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05–23746 Filed 12–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Acting Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on July 1, 2005, through September 30, 2005.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Acting Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the program.

List of Petitions

1. Julie A. Martin on behalf of Samantha N. Martin, Thornton, Colorado, Court of Federal Claims Number 05–0712V.

2. Mercedes Faunde-Omaechevarria and Josu Omaechevarria on behalf of Ander Omaechevarria, Somers Point, New Jersey, Court of Federal Claims Number 05–0713V.

3. Carol A. Hoshim-Fowler on behalf of Parker L. Hoshim-Noel, Langley, Washington Court of Federal Claims Number 05–0714V.

4. Kristie and Joel Beverage on behalf of James Beverage, Portland, Oregon, Court of Federal Claims Number 05–0716V.

5. Christel and Chad King on behalf of Levi King, Windham, Maine, Court of Federal Claims Number 05–0717V.

6. Beth and Kevin Hynes on behalf of Killian J. Hynes, Naperville, Illinois, Court of Federal Claims Number 05–0718V.

7. Roberto Garcia, Norco, California, Court of Federal Claims Number 05–0720V.

8. Thomas Cook on behalf of Krista Lauder, Deceased, Pittsburgh, Pennsylvania, Court of Federal Claims Number 05–0721V.

9. Krista Sawyers on behalf of Sarah Sawyers, Woodbine, Kentucky, Court of Federal Claims Number 05–0723V.

10. John Schardein on behalf of John Brayden Schardein, Conroe, Texas, Court of Federal Claims Number 05–0724V.

11. Gayle George on behalf of Zachary Allen George, Jacksonville, Florida, Court of Federal Claims Number 05–0727V.

12. Maureen Scarboro on behalf of Grant Thomas Scarboro, Forest Hill, Maryland, Court of Federal Claims Number 05–0728V.

13. Patricia Rombalski on behalf of Kasey Bailey, Midland, Michigan, Court of Federal Claims Number 05–0729V.

14. Edward F. Petka, Jr. on behalf of Alexis G. Petka, Wichita, Kansas, Court of Federal Claims Number 05–0730V.

15. Abby M. Stern, North Andover, Massachusetts, Court of Federal Claims Number 05–0733V.

16. Cristina Mallard-Bru on behalf of Roman Bru, West Bloomfield, Michigan, Court of Federal Claims Number 05–0735V.

17. Susan Lee on behalf of Geun Young Lee, Doylestown, Pennsylvania, Court of Federal Claims Number 05–0739V.

18. Lawrence Brodeur on behalf of Harrison Gail Brodeur, Lake Zurich, Illinois, Court of Federal Claims Number 05–0740V.

19. Theresa and Richard Curley on behalf of Thomas Curley, Lake Success, New York, Court of Federal Claims Number 05–0744V.

20. Ghulam Laljiani on behalf of Mohammed Laljiani, Lawrenceville, Georgia, Court of Federal Claims Number 05–0745V.

21. Mark W. Chimiak on behalf of Annalise Chimiak, Jupiter, Florida, Court of Federal Claims Number 05–0747V.

22. Clayborne A. McCorkle on behalf of Clayborne A. McCorkle, Jr., Durham, North Carolina, Court of Federal Claims Number 05–0749V.

23. Kamlawattie Persaud and Jason Agresti on behalf of Jayashree Agresti, Flushing, New York, Court of Federal Claims Number 05–0752V.

24. Maryanne Regan on behalf of Jake Hunt, Bellevue, Washington, Court of Federal Claims Number 05–0753V.

25. Tammy and Evan Starke on behalf of Aidan Starke, Webster, Texas, Court of Federal Claims Number 05–0754V.

26. Holly and Mark Blackburn on behalf of Mitchell Blackburn, Arlington, Texas, Court of Federal Claims Number 05–0756V.

27. Lori Reed on behalf of Ryan Reed, Fort Worth, Texas, Court of Federal Claims Number 05–0757V.

28. Mary Ann Sherman, National City, California, Court of Federal Claims Number 05–0761V.

29. Lynne Rossler Grossman, Boca Raton, Florida, Court of Federal Claims Number 05–0762V.

30. Rebecca Hethcoat on behalf of Austin Hethcoat, Wheaton, Illinois, Court of Federal Claims Number 05–0763V.

31. Vanessa and Shahab Navab on behalf of Shayan Navab, Lake Success, New York, Court of Federal Claims Number 05–0764V.

32. Shannon Young on behalf of Giancarlo de Lucca Young, Lake Success, New York, Court of Federal Claims Number 05–0765V.

33. Amy Jabs Greenwaldt, Waukesha, Wisconsin, Court of Federal Claims Number 05–0766V.

34. Leah Harrington on behalf of Myles Harrington, Jeffersonville, Vermont, Court of Federal Claims Number 05–0771V.

35. Cynthia Byrd on behalf of Kristopher Byrd, Somers Point, New Jersey, Court of Federal Claims Number 05–0774V.

36. Jennifer Horner on behalf of Joel Horner, Newburgh, Illinois, Court of Federal Claims Number 05–0777V.

37. Todd M. Smith on behalf of Todd M. Smith, II, Leesburg, Georgia, Court of Federal Claims Number 05–0778V.

38. David Sanchez, Albequerque, New Mexico, Court of Federal Claims Number 05–0782V.

39. Gerald Ross on behalf of Jonathan Ross, Durham, North Carolina, Court of Federal Claims Number 05–0783V.

40. Gerald Ross on behalf of Jaden Ross, Durham, North Carolina, Court of Federal Claims Number 05–0784V.

41. Nathalie Russo, Astoria, New York, Court of Federal Claims Number 05–0793V.

42. John Mealey on behalf of Liam Mealey, Lynnfield, Massachusetts, Court of Federal Claims Number 05–0795V.

43. Marie Richard-White and John White on behalf of Alaska White, La Mesa, California, Court of Federal Claims Number 05–0796V.

44. Marcy and Patrick Calcagno on behalf of Patrick Ryan Calcagno, Somers Point, New Jersey, Court of Federal Claims Number 05–0797V.

45. Donna L. Hurd on behalf of Dustin Riley-Max Hurd, Tazewell, Virginia, Court of Federal Claims Number 05–0798V.

46. Todd Hall on behalf of Gayge Hall, Leesburg, Georgia, Court of Federal Claims Number 05–0799V.
47. Tammie and Joseph Gibson on behalf of Joseph (Joey) Gibson, V., Houston, Texas, Court of Federal Claims Number 05–0801V.
48. Christina Nicole and John David Fields on behalf of Jayla Nicole Fields, Arlington, Texas, Court of Federal Claims Number 05–0803V.
49. Michelle-Lynn Stewart on behalf of John O'Neil Hamilton, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0831V.
50. Michelle-Lynn Stewart on behalf of Benjamin Thomas Hamilton, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0832V.
51. Debra and Christopher Yoder on behalf of Evan Yoder, Somers Point, New Jersey, Court of Federal Claims Number 05–0833V.
52. Darla Ibarrola on behalf of Israel Ibarrola, South Houston, Texas, Court of Federal Claims Number 05–0834V.
53. Melissa Stuart on behalf of Aubrey Stuart, Edmond, Oklahoma, Court of Federal Claims Number 05–0835V.
54. Kathleen Grey, Ft. Myers, Florida, Court of Federal Claims Number 05–0836V.
55. Tiare Lindahl on behalf of Trinton (Dakota) Leigh Armstrong, Newport Beach, California, Court of Federal Claims Number 05–0857V.
56. Tiare Lindahl on behalf of Cody Leigh Armstrong, Newport Beach, California, Court of Federal Claims Number 05–0858V.
57. Alexandra Soloman on behalf of Brian Soloman, Boston, Massachusetts, Court of Federal Claims Number 05–0859V.
58. Danielle Dorma-Chapa and Joseph Chapa on behalf of Ian Chapa, Boston, Massachusetts, Court of Federal Claims Number 05–0860V.
59. Anita and Michael Byrd on behalf of Matthew Byrd, Boston, Massachusetts, Court of Federal Claims Number 05–0861V.
60. Denise and Roberto Torricella Jr. on behalf of Zachary Matthew Torricella, Miami, Florida, Court of Federal Claims Number 05–0863V.
61. Sharon and Bernard Mohan on behalf of Nicholas Mohan, Pittsburgh, Pennsylvania, Court of Federal Claims Number 05–0865V.
62. Julie and John Ignagni on behalf of Chaz Ignagni, Sarasota, Florida, Court of Federal Claims Number 05–0868V.
63. Misty and John Pat White II on behalf of Jayden Presley White, Somers Point, New Jersey, Court of Federal Claims Number 05–0869V.
64. Heather Rice on behalf of Grant Rice, Houston, Texas, Court of Federal Claims Number 05–0871V.
65. Sandra and Robert Waters on behalf of Candace Waters, Park Ridge, Illinois, Court of Federal Claims Number 05–0872V.
66. Lorri and Daniel Unumb on behalf of Ryan Reed Unumb, Mt. Pleasant, South Carolina, Court of Federal Claims Number 05–0873V.
67. Cheryl and John Viserto on behalf of Alex John Viserto, Lake Success, New York, Court of Federal Claims Number 05–0875V.
68. Linda and John Murray Jr. on behalf of John F. Murray, III, Boston, Massachusetts, Court of Federal Claims Number 05–0876V.
69. Stephanie and Clifton Miller on behalf of Alexandra Miller, Boston, Massachusetts, Court of Federal Claims Number 05–0877V.
70. Olivia Wolfe on behalf of Joseph Wolfe, Yorba Linda, California, Court of Federal Claims Number 05–0878V.
71. Diane Cordick, Yuma, Arizona, Court of Federal Claims Number 05–0879V.
72. Elizabeth Carrier, Laconia, New Hampshire, Court of Federal Claims Number 05–0883V.
73. Lynnette Lee Lowe, Old Township, Pennsylvania, Court of Federal Claims Number 05–0884V.
74. Yu-Shuang and Dieter Paul on behalf of Ashley Jean Paul, Anaheim, California, Court of Federal Claims Number 05–0886V.
75. Beverly Farrow on behalf of Chadwick Omar Farrow, Cochran, Georgia, Court of Federal Claims Number 05–0889V.
76. Devora James on behalf of Michael James, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0890V.
77. Nicole Rahn on behalf of Mary Grace Rahn, Savannah, Georgia, Court of Federal Claims Number 05–0892V.
78. Patrick T. Heese, Aurora, Illinois, Court of Federal Claims Number 05–0893V.
79. Amy Sealover on behalf of Hayden Sealover, Red Lion, Pennsylvania, Court of Federal Claims Number 05–0900V.
80. Ronald Bass, Green Brook, New Jersey, Court of Federal Claims Number 05–0901V.
81. Rhonda Richards, Cambridge, Massachusetts, Court of Federal Claims Number 05–0903V.
82. Tyran Duncan, Fort Benning, Georgia, Court of Federal Claims Number 05–0905V.
83. Tara Lee Cantatore on behalf of Joseph Tyler Cantatore, Blauvelt, New York, Court of Federal Claims Number 05–0910V.
84. Christopher George Wiley, Baton Rouge, Louisiana, Court of Federal Claims Number 05–0911V.
85. Megan and Richard Lee on behalf of Patrick Richard Lee, Jacksonville, Florida, Court of Federal Claims Number 05–0916V.
86. Jennifer Elrod on behalf of Jordan Elrod, Abilene, Texas, Court of Federal Claims Number 05–0917V.
87. Jennifer Elrod on behalf of Dylan Elrod, Abilene, Texas, Court of Federal Claims Number 05–0918V.
88. Beti Argun on behalf of Deniz Argun, Austin, Texas, Court of Federal Claims Number 05–0919V.
89. Devora James on behalf of Daniel R. James, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0920V.
90. Tonya Jester Coleman on behalf of Jayda Jester, Deceased, Ashdown, Arkansas, Court of Federal Claims Number 05–0925V.
91. Linda Josephine Hogan-Estrada on behalf of Miles Knight Estrada, San Clemente, California, Court of Federal Claims Number 05–0928V.
92. Steven Stocker on behalf of Andrew Stocker, Franklin, Tennessee, Court of Federal Claims Number 05–0935V.
93. Wendy Harnisher on behalf of Logan Harnisher, Boston, Massachusetts, Court of Federal Claims Number 05–0936V.
94. Maureen and Richard Femenella on behalf of Joseph Femenella, Boston, Massachusetts, Court of Federal Claims Number 05–0937V.
95. Lidia Hernandez and Victor Dengler on behalf of Mayra Dengler, Tucson, Arizona, Court of Federal Claims Number 05–0938V.
96. Debra and Dan Matthews on behalf of Ryan Matthews, Rockford, Illinois, Court of Federal Claims Number 05–0939V.
97. Jacqueline P. Smith on behalf of Jesse Smith, Baltimore, Maryland, Court of Federal Claims Number 05–0940V.
98. Melinda Simon on behalf of Devin Simon, Deceased, Boston, Massachusetts, Court of Federal Claims Number 05–0941V.
99. Kimberly A. Ward on behalf of Dayton Matthew Ward, Somers Point, New Jersey, Court of Federal Claims Number 05–0942V.
100. Ann Chambers on behalf of Patrick Chambers, Baltimore, Maryland, Court of Federal Claims Number 05–0943V.
101. Jenny Davidson, Ponca City, Oklahoma, Court of Federal Claims Number 05–0944V.
102. Jami and Donald Slater on behalf of John Edward Slater, Lake Success, New York, Court of Federal Claims Number 05–0947V.
103. Kristen and Robert Honer on behalf of Adam Honer, Granite Bay,

California, Court of Federal Claims Number 05–0948V.

104. Amy and Richard Padow on behalf of Joseph Daniel Padow, Salisbury, North Carolina, Court of Federal Claims Number 05–0949V.

105. Renelle and Edward Glover on behalf of Deylan Glover, Baltimore, Maryland, Court of Federal Claims Number 05–0952V.

106. Dana Lynne and Vance Trent Wilson on behalf of Vance Ryan Wilson, Van Nuys, California, Court of Federal Claims Number 05–0953V.

107. Eileen M. Lambiasi on behalf of Kaila Kathleen Lambiasi, Lake Success, New York, Court of Federal Claims Number 05–0958V.

108. Eileen M. Lambiasi on behalf of Lauren Lambiasi, Lake Success, New York, Court of Federal Claims Number 05–0959V.

109. Judith Shanahan on behalf of Sarah Nelms, Charlotte, North Carolina Court of Federal Claims Number 05–0962V.

110. Melissa Sullivan on behalf of Sean Sullivan, Suffield, Connecticut, Court of Federal Claims Number 05–0964V.

111. Heather Mary Lesly on behalf of Nearia Dean Lesly-Gibson, Myrtle Creek, Oregon, Court of Federal Claims Number 05–0967V.

112. Dana and Vance Wilson on behalf of Heather M. Wilson, Garden Grove, California, Court of Federal Claims Number 05–0968V.

113. Laurence Brownstein on behalf of Kai Jacob Brownstein, Petaluma, California, Court of Federal Claims Number 05–0970V.

114. Angela Steffke on behalf of Owen Steffke, Deceased, Indianapolis, Indiana, Court of Federal Claims Number 05–0972V.

115. Melinda and Bernard Gormley on behalf of Brenna Gormley, Boston, Massachusetts, Court of Federal Claims Number 05–0973V.

116. Julie and Brion McAlarney on behalf of Matthew McAlarney, Boston, Massachusetts, Court of Federal Claims Number 05–0974V.

117. Christen and William Walsh on behalf of Shane Walsh, Boston, Massachusetts, Court of Federal Claims Number 05–0975V.

118. Kimberly Casino-Kobus and Harry Kobus on behalf of Hunter Kobus, Boston, Massachusetts, Court of Federal Claims Number 05–0976V.

119. Karen and Brian Fialkoff on behalf of Spencer Fialkoff, Boston, Massachusetts, Court of Federal Claims Number 05–0977V.

120. Angela Barker on behalf of Adam Barker, San Anselmo, California, Court of Federal Claims Number 05–0979V.

121. Kathleen and Michael McAndrews on behalf of Shawn Joseph McAndrews, Yardley, Pennsylvania, Court of Federal Claims Number 05–0980V.

122. Barbara Gallagher on behalf of Brian Gallagher, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0985V.

123. Sue Ellen and Anthony Akers on behalf of Tyler Akers, Pearl, Mississippi, Court of Federal Claims Number 05–0986V.

124. Dana and Vance Wilson on behalf of Vance R. Wilson, Garden Grove, California, Court of Federal Claims Number 05–0987V.

125. Dale Rydberg, Port St. Lucie, Florida, Court of Federal Claims Number 05–0988V.

126. Daphne Hill, Cheraw, South Carolina, Court of Federal Claims Number 05–0989V.

127. Mila and Brian DeWitt on behalf of Anna-Claire DeWitt, Napa, California, Court of Federal Claims Number 05–0995V.

128. Paula and David Trifiletti on behalf of Patrick John Trifiletti, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–0996V.

129. Margaret and Michael Dixon on behalf of Michael Christopher Dixon, Lake Success, New York, Court of Federal Claims Number 05–0997V.

130. Christina and Peter Giasemis on behalf of Vasilios Giasemis, Lake Success, New York, Court of Federal Claims Number 05–0998V.

131. Melissa Cloer, Columbia, Missouri, Court of Federal Claims Number 05–1002V.

132. Tonya and Rodney Ankeney on behalf of Audra Ankeney, Huber Heights, Ohio, Court of Federal Claims Number 05–1003V.

133. Crystal Chanel Hinnant on behalf of Cionni Alicia Vann, Deceased, Philadelphia, Pennsylvania, Court of Federal Claims Number 05–1007V.

134. Maria and Joseph Grande on behalf of Anthony Grande, Lake Success, New York, Court of Federal Claims Number 05–1008V.

135. Mariette and Edward Maleszyk on behalf of Stephanie Maleszyk, Deceased, Detroit, Michigan, Court of Federal Claims Number 05–1009V.

136. Robert Butler, Somers Point, New Jersey, Court of Federal Claims Number 05–1010V.

137. William D. Mahan, Jr. on behalf of William P. Mahan, Mount Gretna, Pennsylvania, Court of Federal Claims Number 05–1012V.

138. Barbara Fernandez on behalf of Gabriel Parker Callaway, Austin, Texas, Court of Federal Claims Number 05–1013V.

139. Tammy and David Conner on behalf of Camden Conner, Boston, Massachusetts, Court of Federal Claims Number 05–1017V.

140. Kelli Cunningham on behalf of John Cunningham, Boston, Massachusetts, Court of Federal Claims Number 05–1018V.

141. Kathleen and Sean Van Uum on behalf of Devon Van Uum, Cleveland, Ohio, Court of Federal Claims Number 05–1024V.

142. Virginia Moore on behalf of Roy Moore, Chula Vista, California, Court of Federal Claims Number 05–1025V.

143. Brian Yoder, Summit, New Jersey, Court of Federal Claims Number 05–1031V.

144. Mary Ann Egan on behalf of Bridget Gum, Farmington, New Jersey, Court of Federal Claims Number 05–1032V.

145. Jennifer Savchuk on behalf of Madison Welch, Somers Point, New Jersey, Court of Federal Claims Number 05–1033V.

146. Tonya Raye Hetrick on behalf of Brandon Kane Hetrick, Lexington, North Carolina, Court of Federal Claims Number 05–1034V.

147. Mary Filipello on behalf of Ginovanni Filipello, Palos Heights, Illinois, Court of Federal Claims Number 05–1035V.

148. Jean and Clifford Meijer on behalf of Matthew Meijer, Boston, Massachusetts, Court of Federal Claims Number 05–1036V.

149. Buffy Woodbury on behalf of Jaycee Woodburry, Boston, Massachusetts, Court of Federal Claims Number 05–1037V.

150. Mary and Dennis Bitz on behalf of John Bitz, Boston, Massachusetts, Court of Federal Claims Number 05–1038V.

151. Lori and Bryon Hamlett on behalf of Joshua Hamlett, Boston, Massachusetts, Court of Federal Claims Number 05–1039V.

152. Raymond Ostrander, Easton, Pennsylvania, Court of Federal Claims Number 05–1046V.

153. Charlene Odom on behalf of Charday Odom, Somers Point, New Jersey, Court of Federal Claims Number 05–1047V.

154. Maria Elena and Rene Ortiz on behalf of Alejandra Ortiz, Albuquerque, New Mexico, Court of Federal Claims Number 05–1052V.

155. Tawana and Anthony Collins on behalf of Anthony Collins, Birmingham, Alabama, Court of Federal Claims Number 05–1055V.

Dated: December 1, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. E5–7063 Filed 12–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Compliance Program Guidance for Recipients of PHS Research Awards—Extension of Comment Period

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period; extension of comment period.

SUMMARY: On November 28, 2005, we published a notice and comment period seeking comments from interested parties on draft compliance program guidance (CPG) developed by the Office of Inspector General (OIG) for recipients of extramural research awards from the National Institutes of Health and other agencies of the U.S. Public Health Service (PHS) (70 FR 71312). To facilitate public comment, we are extending the comment period.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on January 30, 2006.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–1026–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC, 20201.

We do not accept comments by facsimile (FAX) transmissions. In commenting, please refer to file code OIG–1026–CPG.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Through the draft CPG notice, OIG is setting forth its general views on the value and fundamental principles of compliance programs for colleges and universities and other recipients of PHS awards for biomedical and behavioral research and the specific elements that these award recipients should consider when developing and implementing an effective compliance program. As with OIG's earlier CPGs, the purpose of the draft guidance is to encourage the use of internal controls to effectively monitor adherence to applicable statutes, regulations, and program requirements.

To ensure full and complete public comment from affected outside research institutions and associations, we are extending the public comment period for this notice until January 30, 2006.

Dated: December 5, 2005.

Joel Schaer,

Regulations Officer.

[FR Doc. E5–7086 Filed 12–7–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine (Board).

The Board shall advise the Director, NIH; the Deputy Director for Intramural Research, NIH; the Director, National Library of Medicine (NLM); and the Director, National Center for Biotechnology Information (NCBI), concerning the intramural research and development programs of the NCBI, NLM through regularly scheduled visits to the NLM for assessment of the research and development programs in progress at the NCBI, assessments of proposed programs and evaluation of the productivity and performance of staff scientists.

The Board shall consist of 8 members, including the Chair, appointed by the Director, NIH, from authorities knowledgeable in the fields of health sciences, computer sciences, information sciences, information technology, library science, behavioral sciences, social sciences, educational technology, communications engineering, molecular biology, biochemistry, genetics, structural chemistry, mathematics, statistics, and multi-media development and utilization.

Duration of this committee is continuing unless formally determined by the Director, NIH that termination would be in the best public interest.

Dated: November 29, 2005.

Elias Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–23797 Filed 12–07–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of 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 a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, 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 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/or contact proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: January 19, 2006.

Open: 8 a.m. to 12 p.m.

Agenda: NCRR Director's report and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the

record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on its notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.036, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23795 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Review of Institutional National Research Service Awards (T32s).

Date: December 14, 2005.

Time: 4:15 p.m. to 5:15 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: Charles Joyce, PhD, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23799 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of 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 a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, 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 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 Advisory Council on Drug Abuse.

Date: February 7–8, 2006.

Closed: February 7, 2006, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: February 8, 2006, 8:30 a.m. to 1 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401 (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23791 Filed 12–7–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Research Program Projects.

Date: December 6, 2005.

Time: 9 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Helen Lin, Ph.D., Scientific Review Administrator, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817. 301–594–4952. *linh1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 29, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23793 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Mentored Patient-Oriented Research Career Development Award (K23).

Date: December 15, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709. (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Nat'l Institutes of Environmental Health Sciences, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709. (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23794 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAID. Division of Intramural Research, Board of Scientific Counselors.

Date: December 5–7, 2005.

Time: December 6, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate review of intramural laboratories.

Place: National Institutes of Health, Building 50, 50 Center Drive, Conference Room 1227/1233, Bethesda, MD 20892.

Time: December 6, 2005, 8 a.m. to 5 p.m.

Agenda: To review and evaluate review of intramural laboratories.

Place: National Institutes of Health, Building 50, 50 Center Drive, Conference Room 1227/1233, Bethesda, MD 20892.

Time: December 7, 2005, 8 a.m. to 10:30 a.m.

Agenda: To review and evaluate review of intramural laboratories.

Place: National Institutes of Health, Building 50, 50 Center Drive, Conference Room 1227/1233, Bethesda, MD 20892.

Contact Person: Kathryn C. Zoon, PhD, Acting Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

This meeting is being published less than 15 days prior to the meeting date because of an administrative error.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23796 Filed 12–7–05:8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel. Hurricane Katrina Time Sensitive Review.

Date: December 16, 2005.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Meenaxi Hiremath, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6101 Executive Blvd., Suite 220, MSC 8401, Bethesda, MD 20892, 301–402–7964, *mh392g@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23800 Filed 12–7–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Notice is hereby given of the first meeting of the Working Group on Chemical Information Resource Coordination under the National Library of Medicine's (NLM) Board of Scientific Counselors, National Center for Biotechnology Information (NCBI).

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 Working Group on Chemical Information Resource Coordination is to advise the Board of Scientific Counselors, NCBI, on interactions with private sector information providers in the development of the PubChem database. PubChem is a publicly available database that includes information about the biological activities of chemical compounds, and is designed to facilitate more integrated access to these information resources for biomedical researchers. The working group will: (1) Establish a process for retrospective evaluation of the biomedical relevance of compounds entered into PubChem, (2) Ensure the provenance of the data (i.e., whether private data are being improperly deposited into PubChem), (3) Ensuring the high quality of data in PubChem, (4) Monitoring the effect of PubChem on scientific progress, (5) Improving/integrating interactions with commercial information providers, and (6) Avoiding unnecessary duplication with commercial information providers. This working group supports part of the National Institutes of Health's Roadmap, called the Molecular Libraries Initiative.

Name of Committee: Working Group on Chemical Information Resource Coordination.

Date: December 19, 2005.

Time: 9 a.m. to 4 p.m.

Agenda: Discussion on the NLM/NCBI PubChem Database.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: David J. Lipman, MD, Director, National Center for Biotechnology Information, National Library of Medicine, NIH, Building 38A, Room 8N803, Bethesda, MD 20894, 301–496–2475.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comment should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: November 29, 2005.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23792 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, 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 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: February 6, 2006.

Closed: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: February 7, 2006.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: February 7–8, 2006.

Open: February 7, 2006, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: February 7, 2006, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: February 8, 2006, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine Planning Subcommittee.

Date: February 8, 2006.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Long-Range Planning.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 30, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–23798 Filed 12–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes a list of laboratories in the **Federal Register** that are currently certified to meet standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (69 FR 19644) dated April 13, 2004. This notice informs the public that effective November 15, 2005, the following laboratory's certification is suspended: Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732.

FOR FURTHER INFORMATION CONTACT: Donna M. Bush, PhD, Division of Workplace Programs, CSAP, One Choke Cherry Road, Room 2–1033, Rockville, Maryland 20857, 240–276–2600 (voice), 240–276–2610 (fax)

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. 05–23825 Filed 12–7–05; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–23167]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers 1625–0097, 1625–0103, and 1625–0104

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to seek the approval of OMB for the renewal of three Information Collection Requests (ICRs). The ICRs are: (1) 1625–0097, Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F; (2) 1625–0103, Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States; and (3) 1625–0104, Barges Carrying Bulk Hazardous Materials. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before February 6, 2006.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2005–23167] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery 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. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, Room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–267–2326, or fax 202–267–4814, for questions on these documents; or telephone Ms. Renee V. Wright, Program Manager, Docket Operations, 202–493–0402, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov;* they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2005–23167], indicate the specific section of the document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

1. *Title:* Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 1625–0097.

Summary: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard for review and approval, plans pertaining to marine engineering systems to ensure that the vessel will meet regulatory standards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe vessel safety regulations including those related to marine engineering systems. 46 CFR Subchapter F prescribes those requirements. The rules provide the specifications, standards and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life is dependent.

Respondents: Owners and builders of commercial vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 3,090 hours to 3,567 hours a year.

2. *Title:* Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB Control Number: 1625–0103.

Summary: The information is needed to reduce the number of ship collisions with endangered northern right whales. The rules establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Need: 33 U.S.C. 1230(d) authorizes the Coast Guard to implement and enforce these ship reporting systems. The collection involves ships' reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ship will receive, in return, information to reduce the likelihood of collisions between themselves and northern right whales—an endangered species—in the areas established with critical-habitat designation.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 88 hours to 226 hours a year.

3. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 1625–0104.

Summary: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. The requirements are necessary to ensure that barges meet safety standards and to ensure that barge's crewmembers have the information necessary to operate barges safely.

Need: 33 U.S.C. 1903 and 46 U.S.C. 3703 authorize the Coast Guard to prescribe rules related to the carriage of liquid bulk dangerous cargoes. 46 CFR part 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 10,903 hours to 13,255 hours a year.

Dated: November 30, 2005.

R.T. Hewitt,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E5–7020 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1617–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1617–DR), dated December 1, 2005, and related determinations.

EFFECTIVE DATE: December 1, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 1, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and tornadoes on November 15, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, under Executive Order 12148, as amended, Jesse Munoz, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster: Hopkins and Marshall Counties for Individual Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E5–7059 Filed 12–7–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: We must receive written data or comments on these applications at the address given below, by January 9, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

FOR FURTHER INFORMATION CONTACT: Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Services Regional Office (see **ADDRESSES** section) or via electronic mail (e-mail) to ''*victoria_davis@fws.gov.*'' Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (see **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES** section).

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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Applicant: Chris Andrew Fleming, Franklin, Tennessee, TE111326–0.

The applicant requests authorization to take (capture, identify, relocate, release) the Nashville crayfish (*Orconectes shoupi*). Take would occur while conducting presence/absence surveys, sweeps, and temporary relocations of individuals during construction activities located adjacent to suitable habitat. The proposed activities would occur in the Mill Creek Watershed, Davidson and Williamson Counties, Tennessee.

Applicant: Register-Nelson, Inc., Bobby D. Register, McDonough, Georgia, TE114088–0.

The applicant requests authorization to take (capture and release) the blue shiner (*Cyprinella caerulea*), amber darter (*Percina antesella*), Cherokee darter (*Etheostoma scotti*), Etowah darter (*Etheostoma etowahae*), goldline darter (*Percina aurolineata*), snail darter (*Percina tanasi*), and Conasauga logperch (*Percina jenkinsi*) while conducting presence/absence surveys. The proposed activities would occur in Georgia.

Applicant: U.S. Army Corps of Engineers, Memphis District, David L. Reece, Memphis, Tennessee, TE114190–0.

The applicant requests authorization to take (collect, temporarily hold, translocate, release) oyster mussels (*Epioblasma capsaeformis*) while conducting restoration activities. The proposed activities would occur from the Tennessee section of the Clinch River upstream into the Virginia section of the river.

Applicant: University of Central Florida, Department of Biology, 4000 Central Florida Boulevard, Orlando, Florida, TE105642–0.

The applicant requests authorization to take (collect non-viable eggs of) red-cockaded woodpeckers (*Picoides borealis*) while studying developmental analysis to determine fertility, while conducting genetic studies, and while conducting other applicable studies. The proposed activities would occur throughout the species(southern range.

Applicant: University of Central Florida, Department of Biology, Orlando, Florida, TE105642–0.

The applicant requests authorization to take (capture, identify, release) southeastern beach mice (*Peromyscus polionotus niverventris*) and Anastasia Island beach mice (*Peromyscus polionotus phasma*) while conducting presence/absence studies. The proposed activities would occur in Volusia, Brevard, Saint Lucie, Indian River, Marten, Palm Beach, and Broward Counties, Florida.

Applicant: John Malcolm Pierson, Pierson Environmental Consultation, 204 Stetson Lane, Alabaster, Alabama, TE114677–0.

The applicant requests authorization to take (capture, identify, photograph, collect tissue samples, salvage dead specimen, release) the following species: slender campeloma (*Campeloma decampi*), cylindrical lioplax (*Lioplax cyclostomaformis*), Tulotoma snail (*Tulotoma magnifica*), Anthony's riversnail (*Athearnia anthonyi*), Lacy Elimia (snail) (*Elimia crenatella*), painted rocksnail (*Leptoxis taeniata*), plicate rocksnail (*Leptoxis plicata*), round rocksnail (*Leptoxis ampla*), Tumbling Creek cavesnail (*Antrobia culveri*), flat pebblesnail (*Lepyrium showalteri*), royal marstonia (snail) (*Pyrgulopsis ogmorhaphe*), armored snail (*Pyrgulopsis* (=*Marstonia*) *pachyta*), painted snake coiled forest snail (*Anguispira picta*), noonday snail (*Mesodon clarki nantahala*), Magazine mountain shagreen (*Mesodon magazinensis*), Stock Island tree snail (*Orthalicus reses*), Cumberland elktoe (*Alasmidonta atropurpurea*), Appalachian elktoe (*Alasmidonta raveneliana*), fat three-ridge (mussel) (*Amblema neislerii*), Ouachita rock pocketbook (*Arkansia wheeleri*), birdwing pearlymussel (*Conradilla caelata*), fanshell (*Cyprogenia stegaria*), dromedary pearlymussel (*Dromus dromas*), shiny pigtoe (*Fusconaia cor*), finerayed pigtoe (*Fusconaia cuneolus*), Chipola slabshell (*Elliptio chipolaensis*), purple bankclimber (mussel) (*Elliptoideus sloatianus*), Cumberlandian combshell (*Epioblasma*

brevidens), oyster mussel (*Epioblasma capsaeformis*), Yellow blossom (pearlymussel) (*Epioblasma florentina florentina*), Curtis pearlymussel (*Epioblasma florentina curtisii*), tan riffleshell (*Epioblasma florentina walkeri*), upland combshell (*Epioblasma metastriata*), Catspaw (=purple cat=s paw pearlymussel) (*Epioblasma obliquata obliquata*), southern acornshell (*Epioblasma othcaloogensis*), southern combshell (*Epioblasma* (=*Dysnomia*) *penita*), green blossom (pearlymussel) (*Epioblasma torulosa gubernaculum*), Tuberoled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), cracking pearlymussel (*Hemistena lata*), pink mucket (pearlymussel) (*Lampsilis abrupta*), fine-lined pocketbook (*Lampsilis altilis*), Higgins eye (*Lampsilis higginsii*), orange-nacre mucket (*Lampsilis perovalis*), Arkansas fatmucket (*Lampsilis powelli*), speckled pocketbook (*Lampsilis streckeri*), shinyrayed pocketbook (*Lampsilis subangulata*), Alabama lampmussel (*Lampsilis virescens*), Carolina heelsplitter (*Lasmigona decorata*), scaleshell mussel (*Leptodea leptodon*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), ring pink (mussel) (*Obovaria retusa*), little-wing pearlymussel (*Pegias fabula*), white wartyback (pearlymussel) (*Plethobasus cicatricosus*), orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*), clubshell (*Pleurobema clava*), black clubshell (*Pleurobema curtum*), southern clubshell (*Pleurobema decisum*), dark pigtoe (*Pleurobema furvum*), southern pigtoe (*Pleurobema georgianum*), Cumberland pigtoe (*Pleurobema gibberum*), flat pigtoe (*Pleurobema marshalli*), ovate clubshell (*Pleurobema perovatum*), rough pigtoe (*Pleurobema plenum*), oval pigtoe (*Pleurobema pyriforme*), heavy pigtoe (*Pleurobema taitianum*), fat pocketbook (*Potamilus capax*), Alabama (=inflated) heelspitter (*Potamilus inflatus*), triangular kidneyshell (*Ptychobranchus greenii*), rough rabbitsfoot (*Quadrula cylindrical strigillata*), winged mapleleaf (mussel) (*Quadrula fragosa*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*), stirrupshell (*Quadrula stapes*), pale lilliput (pearlymussel) (*Toxolasma cylindrellus*), purple bean (*Villosa perpurpurea*), Cumberland bean (pearlymussel) (*Villosa trabalis*), gulf sturgeon (*Acipenser oxyrinchus desotoi*), Alabama sturgeon (*Scaphirhynchus suttkusi*), blue shiner (*Cyprinella caerulea*), spotfin chub (*Cyprinella* (=*Hybopsis monacha*)), palezone shiner (*Notropis albizonatus*), Cahaba shiner (*Notropis cahabae*), slackwater darter (Etheostoma boschungi), vermilion darter (*Etheostoma chermocki*), watercress darter (*Etheostoma nuchale*), boulder darter (*Etheostoma wapiti*), goldline darter (*Percina aurolineata*), snail darter (*Percina tanasi*), flattened musk turtle (*Sternotherus depressus*), and gopher tortoise (*Gopherus polyphemus*). Take would occur while conducting presence/absence surveys. The proposed activities would occur in Alabama, Tennessee, Georgia, Florida, and Mississippi.

Dated: November 15, 2005.

Noreen E. Walsh,

Acting Regional Director.

[FR Doc. E5–7041 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Extension of Existing Information Collection to be Submitted to OMB for Review Under the Paperwork Reduction Act

The U.S. Geological Survey (USGS) received emergency approval from the Office of Management and Budget (OMB) for an information collection in use without an OMB approval number. A request extending the information collection described below will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected and;

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Bird Banding.

OMB Approval No.: 1028–0082.

Summary: In accordance with the Migratory Bird Treaty Act, 16 U.S.C. 703–712, the trapping and marking of wild migratory birds by persons holding Federal permits must be monitored. Formerly managed by the U.S. Fish and Wildlife Service, the bird banding program is now the responsibility of the USGS Bird Banding Laboratory (BBL). This bird banding monitoring program involves information collections on three forms: (1) The Application for Federal Bird Marking and Salvage Permit; (2) The Bird Banding Recovery Report; and (3) The Bird Banding Schedule. The information on the Recovery Report may also be submitted electronically at the BBL Web site or via a toll-free telephone number. This program also assists the Fish and Wildlife Service in fulfillment of its responsibilities designated by International Migratory Bird Treaties with Canada, Mexico, Japan, and the Soviet Union.

Estimated Completion Time: 30 minutes for Permit Application form; 3 minutes for Recovery Report form; and 12 minutes for Banding Schedule form.

Estimated Annual Number of Responses: 131,550.

Estimated Annual Burden Hours: 13,725 hours.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the forms, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (703–648–7313); or USGS Bird Banding Laboratory, Patuxent Wildlife Research Center, 12100, Beech Forest Road, Laurel, MD 20708–4037.

Dated: November 30, 2005.

Susan D. Haseltine,

Associate Director for Biology.

[FR Doc. 05–23741 Filed 12–7–05; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

United States Geological Survey; Notice of an Open Meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting is to discuss broad policy-related topics relating to national water initiatives, and the development and dissemination of water information, through reports from eight ACWI subgroups. The agenda will include presentation of a proposed Design for a National Water Quality Monitoring Network for Coastal Waters and Their Tributaries. The ACWI has been established under the authority of the Office of Management and Budget Memorandum M92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry and professional and technical societies. Member organizations designate their representatives and alternates. Membership is limited to a maximum of 35 organizations.

DATES: The formal meeting will convene at 8:30 a.m. on January 18, 2006, and will adjourn on January 19, 2006 at 4:30 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 417, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648—5644.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, January 6, 2006. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI meeting.

Dated: December 2, 2005.

Katherine Lins,

Chief, Office of Water Information.

[FR Doc. 05–23774 Filed 12–7–05; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2007 or Calendar Year 2007

AGENCY: Office of Self-Governance, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2006, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2007 or calendar year 2007.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2006.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to William A. Sinclair, Director, Office of Self-Governance, Department of the Interior, Mail Stop 4618–MIB, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR Parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2007 and calendar year 2007. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2007 or calendar year 2007 must respond to this notice, except for those which are: (1) Currently involved in negotiations with the Department; (2) one of the 90 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: November 22, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7019 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1320–01; NMNM 8128, NMNM 8130, and NMNM 11670]

Notice of Availability, Record of Decision (ROD) for the Thermal Energy Company Preference Right Lease Applications (PRLAs), San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Regulations for the PRLA process require that a ROD be made available to the public. The ROD in this case is the document announcing the Bureau of Land Management's decision regarding the PRLAs submitted by the Thermal Energy Company. This action gives notice of the availability of the ROD for the PRLAs for the Thermal Energy Company.

ADDRESSES: Copies of the ROD can be obtained at the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

FOR FURTHER INFORMATION CONTACT: Ida T. Viarreal, Land Law Examiner, at (505) 438–7603.

Dated: November 8, 2005.

Linda S.C. Rundell,

State Director.

[FR Doc. E5–7070 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 5, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 23, 2005.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

California

Los Angeles County

Sears, Roebuck & Company Mail Order Building, 2650 E. Olympic Blvd., Los Angeles, 05001407

Montana

Cascade County

Russell, Charlie and Nancy, Homenymoon Cabin, 20 Russell Dr. S, Cascade, 05001408

North Carolina

Avery County

Elk Park School, 253 Elk Park School Rd., Elk Park, 05001410

Buncombe County

Sunset Terrace Historic District, 9–48 Sunset Terrace, Asheville, 05001411

Catawba County

Hickory Southwest Downtown historic District, (Hickory MRA), Portions of Government Ave. SE Second Street Place SE, First Ave. SW and Third St. SW, Hickory, 05001409

Edgecombe County

Bracebridge Hall (Boundary Increase), 7714 Colonial Rd., both sides of Colonial Rd. at jct with Carr Farm Rd., Macclesfield, 05001412

Forsyth County

Shultz, Christian Thomas, House, 3960 Walnut Hills Dr., Winston-Salem, 05001413

Haywood County

Waynesville Main Street Historic District, Roughly bounded by Depot St., Church and E. Sts, Wall St., and Montgomery St., Waynesville, 05001414

Henderson County

Camp Arrowhead, Cabin Creek Rd., 1 mi. W of jct. with Green River Rd., Tuxedo, 05001415

Lincoln County

Lincolnton Commercial Historic District, Roughly bounded by Pine St., Poplar St., Church St. and W. Court Square, Lincolnton, 05001419

Oklahoma

Grady County

Verden Separate School, 315 E. Ada Sipuel Ave., Chickasha, 05001416

Jackson County

Baker, W. C., House, 301 E. Commerce, Altus, 05001417

Muskogee County

Kendall Place Historic District, Roughly bounded by W. Okmulgee St., S. 11th St., Elgin St., alley N of Columbus St., S. 14th and S. 16th Sts., Muskogee, 05001418

Oregon

Lane County

Peterson Apartments, (Residential Architecture of Eugene, Oregon MPS), 1263 Oak St., Eugene, 05001420

Vermont

Addison County

House at 215 School St., 215 School St., Shoreham, 05001423

Chittenden County

Ruggles, Lucy, House, 262 S. Prospect St., Burlington, 05001421

Washington County

National Clothespin Factory, One Granite St., Montpelier, 05001422

Wisconsin

Ashland County

Copper Falls State Park, WI 169, 1.8 mi. NE of Mellen, Morse, 05001425

Winston—Cadotte Site, Address Restricted, La Pointe, 05001424

[FR Doc. E5–7023 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost for 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 9, 2006, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information contained in 30 CFR part 800, Bonding and insurance requirements for surface coal mining

and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for each information collection activity.

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 number for this collection of information is 1029–0043 for 30 CFR part 800.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for this collection of information was published on July 27, 2005 (70 FR 43451). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs, 30 CFR part 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implemented § 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation applicants and State regulatory authorities.

Total Annual Responses: 13,880.

Total Annual Burden Hours: 131,384 hours.

Total Annual Cost Burden: $2,073,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

Dated: September 27, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–23785 Filed 12–7–05; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0111 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR 761, Areas designated by Act of Congress; and 30 CFR 772, Requirements for coal exploration.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 9, 2006, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6556 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 761, Areas designated by Act of Congress; and 30 CFR 772, Requirements for coal exploration. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of information are 1029–0111 for 30 CFR 761, and 1029–0112 for 30 CFR 772.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for these collections of information was published on august 5, 2005 (70 FR 45422). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Areas designated by Act of Congress, 30 CFR part 761.

OMB Control Number: 1029–0111.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by § 552(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Responses: 119.

Total Annual Burden Hours: 534.

Total Annual Non-Hour Burden Costs: $3,235.

Title: Requirements for coal exploration, 30 CFR 772.

OMB Control Number: 1029–0112.

Summary: OSM and state regulatory authorities use the information collected under 30 CFR part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR part 772 section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.
Total Annual Burden Hours: 8,218.
Total Annual Non-Hour Burden Costs: $1,456.

November 30, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–23786 Filed 12–8–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–385 and 386 (Second Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

Determinations

On the basis of the record [1] developed in these subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

On December 1, 2004, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (69 FR 69954, December 1, 2004). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 4, 2005 (70 FR 24613). The hearing was held in Washington, DC, on October 25, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 13, 2005. The views of the Commission are contained in USITC Publication 3823 (December 2005), entitled *Granular Polytetrafluoroethylene Resin from Italy and Japan: Investigation Nos. 731–TA–385 and 386 (Second Review).*

Issued: December 2, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7024 Filed 12–7–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissent with regard to the determination concerning Japan.

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–556]

In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 4, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Lumileds Lighting U.S., LLC of San Jose, California. A supplemental letter was filed on November 23, 2005. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain high-brightness light emitting diodes and products containing same by reason of infringement of claims 1 and 6 of U.S. Patent No. 5,008,718, claims 1–3, 8–9, 16, 18, and 23–28 of U.S. Patent No. 5,376,580, and claims 12–16 of U.S. Patent No. 5,502,316. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 1, 2005, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-brightness light emitting diodes or products containing same by reason of infringement of one or more of claims 1 and 6 of U.S. Patent No. 5,008,718, claims 1–3, 8–9, 16, 18, and 23–28 of U.S. Patent No. 5,376,580, and claims 12–16 of U.S. Patent No. 5,502,316, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Lumileds Lighting U.S., LLC, 370 West Trimble Road, San Jose, CA 95131.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Epistar Corporation, 5 Li-Hsin 5th Road, Science-Based Industrial Park, Hsinchu, Taiwan. United Epitaxy Company, 9F, No. 10, Li-Hsin Road, Science-Based Industrial Park, Hsinchu, Taiwan.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 2, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7076 Filed 12–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–519]

In the Matter of Certain Personal Computers, Monitors, and Components Thereof; Notice of Commission Decision to Review-In-Part an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930 and to Remand Portions of the Investigation to the Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') issued on October 6, 2005, in the above-captioned investigation and to remand portions of the investigation to the ALJ to make additional factual findings and determinations.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on August 6, 2004, based on a complaint filed by Gateway, Inc. of Poway, California (''Gateway''). 69 FR 47956 (August 6, 2004). The complainant alleged violations of section 337 in the importation and sale of certain personal computers, monitors, and components thereof, by reason of infringement of three U.S. patents. The complainant named Hewlett-Packard Company of Palo Alto, California as a respondent. Claims 9–11 and 15–19 of U.S. Patent No. 5,192,999 (''the '999 patent'') remain at issue in this investigation.

The evidentiary hearing was held from May 23 through May 26, 2005. On October 6, 2005, the ALJ issued a final ID finding no violation of section 337. All the parties to the investigation, including the Commission investigative attorney, filed timely petitions for review of various portions of the final ID. Respondent's petition is contingent upon a Commission determination to review the ALJ's findings on the issue of inequitable conduct. HP's Petition at

1. The parties all filed timely responses to all the petitions

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to: (1) Review the ALJ's determination on induced infringement of Claim 19 and remand for further factual findings and analysis; (2) review the ALJ's determination on obviousness solely for the purpose of clarifying the ID's discussion of *Sakraida* v. *AG Pro, Inc.,* 425 U.S. 273 (1976); (3) review the ALJ's determination on enablement; and (4) review the issue of inequitable conduct and remand for further factual findings and analysis. The Commission has further determined not to review the remainder of the ID.

Written Submissions: The Commission does not request any written submissions at this time.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Issued: December 1, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7026 Filed 12–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–860 (Review)]

Tin- and Chromium-Coated Steel Sheet From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on tin- and chromium-coated steel sheet from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on tin- and chromium-coated steel sheet from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: December 2, 2005.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On October 4, 2005, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (70 F.R. 60110, October 14, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the review will be placed in the nonpublic record on April 7, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on April 27, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 20, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 24, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 18, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 8, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 8, 2006. On June 2, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 6, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7083 Filed 12–7–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights; Certification of the State of North Carolina Accessibility Code Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of certification of equivalency.

SUMMARY: The Department of Justice (Department) has determined that the 2002 North Carolina Accessibility Code with 2004 Amendments (NCAC) meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department has issued a certification of equivalency, pursuant to

42 U.S.C. 12188(b)(1)(A)(ii) and 28 CFR 36.601 *et seq.*, which constitutes rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the NCAC meets or exceeds the requirements of the ADA.

DATES: December 8, 2005.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., 1425 NYA Building, Washington, DC 20530. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TTY).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

The North Carolina Department of Insurance requested that the Department of Justice (Department) certify that the 2002 North Carolina Accessibility Code with 2004 Amendments (NCAC) meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the NCAC and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated March 17, 2005, the Department notified the North Carolina Department of Insurance of its preliminary determination of equivalency.

On April 8, 2005, the Department published notices in the **Federal Register** announcing its preliminary determination of equivalency and requesting public comments thereon. The period for submission of written comments ended on June 7, 2005. In addition, the Department held public hearings in Cary, North Carolina on May 16, 2005, and in Washington, DC, on June 20, 2005.

Seven individuals provided comments. The commenters included design professionals, disability rights advocates, government officials, and other interested individuals. The Department has analyzed all of the submitted comments and has consulted with the U.S. Architectural and Transportation Barriers Compliance Board.

The majority of the comments the Department received supported certification of the NCAC. Two commenters, while not opposing certification of the NCAC, had questions about the State's enforcement of the NCAC. Based on these comments, the Department has determined that the NCAC is equivalent to the new construction and alterations requirements of title III of the ADA. Therefore, the Department has informed the submitting official of its decision to certify the NCAC.

Effect of Certification

The certification determination will be limited to the version of the NCAC that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the NCAC, but are not addressed by the new construction and alterations requirements of title III of the ADA, including the ADA Standards for Accessible Design.

Finally, certification does not apply to variances or waivers granted under the NCAC. Certification also does not apply if other State building codes provide exemptions from the NCAC requirements. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the NCAC for any element of new construction or alterations, the builder would not be in compliance with the ADA and would not be able to benefit from certification's rebuttable evidence of ADA compliance with respect to that element.

Wan J. Kim,

Assistant Attorney General for Civil Rights.

[FR Doc. E5–7072 Filed 12–7–05; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on November 17, 2005, a proposed consent decree in *United States et al.* v. *Atlas Roofing Corporation*, Case No. CV 05–8180JFW (RZx), was lodged with the United States District Court for the Central District of California.

In this action, the United State and the South Coast Air Quality Management District, (''SCAQMD'') sought injunctive relief and civil penalties under Section 113 of the Clean Air Act and Cal. Health & Safety Code §§ 42401, 42402.1 against Atlas Roofing Corporation (''Atlas'') at its expanded polystyrene (''EPS'') foam manufacturing facility in Los Angeles, California, for: (1) Failure to demonstrate that the emission control system at the facility complied with SCAQMD Rule 1175, a part of the California State Implementation Plan; (2) failure to comply with a permit condition limiting the pentane content of the polystyrene beads used at the facility; (3) failure to comply with a permit condition regarding the operation of the control device; (4) violation of SCAQMD Hearing Board's Order limiting the pentane content of the polystyrene beads; and (5) violation of SCAQMD Hearing Board's Order for Abatement regarding the operation of the control device. The consent decree requires Atlas to: (1) Pay a civil penalty of $221,400 to the United States; (2) pay a civil penalty of $147,000 to SCAQMD; and (3) cease all EPS foam operations regulated by SCAQMD 1175 at the facility by December 31, 2005.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, with a copy to Ann Hurley, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States et al.* v. *Atlas Roofing Corporation*, D.J. Ref. #90–5–2–1–08415.

The consent decree may be examined at U.S. EPA Region 9, Office of regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy

of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–23743 Filed 12–7–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

CERCLA Consent Decree for Settlement of Response Costs and Civil Penalty Claims Associated With the River Terrace RV Park Site

AGENCY: Department of Justice.

ACTION: Notice of availability for public comment.

Authority: 28 CFR 50.7

Notice is hereby given that on November 23, 2005, a CERCLA Consent Decree For Settlement Of Response Costs And Civil Penalty Claims Associated With The River Terrace RV Park Site (''Consent Decree'') in *United States* v. *Gary C. Hinkle and Judith A. Hinkle,* Docket No. A05–0111 CV (RRB), was lodged with the United States District Court for the District of Alaska. In this action brought pursuant to Sections 107, 109 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, 9609 and 9622, the United States is seeking: (1) The reimbursement of response costs incurred in connection with a removal action at the River Terrace RV Park Site in Soldotna, Alaska; and (2) a civil penalty for the failure of the Hinkles to abide by the terms of a 1997 Administrative Order on Consent for Removal Action (''AOC'') that they entered into with the Environmental Protection Agency (EPA), under which they agreed to reimburse EPA for the United States' costs incurred in connection with, *inter alia,* overseeing the Hinkles' conduct of the removal action in accordance with the AOC and enforcing the AOC.

The Consent Decree requires two payments from the Hinkles—one reimbursement the United States' response costs in the amount of $241,000.00, the second a civil penalty of $7,500.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Gary C. Hinkle and Judith A. Hinkle,* D.J. Ref. #90–11–3–07377. During the public comment period, the Consent Decree may be examined during business hours at the same address by contacting Lorraine Carter (907–271–5452) or on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may be obtained by contacting Lorraine Carter in writing at the address above or via electronic mail (*lorraine.carter@usdoj.gov*). In requesting a copy by mail, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. This amount does not include costs for reproduction of Appendix A to the Consent Decree (a copy of the AOC). If you would like a copy of Appendix A in addition to a copy of the Consent Decree, please send a check in the amount of $11.50.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–23742 Filed 12–7–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Notice of Appeal from a Decision of an Immigration Judge.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 151, page 45746 on August 8, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 9, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal from a Decision of an Immigration Judge.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–26, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: A party (either the U.S. Immigration and Customs Enforcement of the Department of Homeland Security or the respondent/applicant) who appeals a decision of an Immigration Judge to the Board of Immigration Appeals (Board). Other: None. Abstract: A party affected by a decision of an Immigration Judge may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). An appeal from an Immigration Judge's decision is taken by completing the Form EOIR–26 and submitting it to the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 23,417 respondents will complete the form annually within an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 11,708 total burden hours associated with this collection annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: December 2, 2005.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. E5–7044 Filed 12–7–05; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Sixth Annual DNA Grantees Workshop Evaluation Form.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 106, page 32655 on June 3, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 9, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Sixth Annual DNA Grantees Workshop Evaluation Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Justice Programs, National Institute of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Not-for-profit Institutions, and Federal Government. The information collected in this assessment will be used to help plan future DOJ DNA workshops. Attendees of the workshop are asked to assess the panel topics, offered sessions, and overall benefits of the workshop. Additionally, the attendees are asked to provide any general comments they may have regarding the workshop.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 7200 respondents will complete the form in approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this form is 1200 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 2, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. E5–7043 Filed 12–7–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,220]

A.M.S.E.A., Inc. Including On-Site Leased Workers of Technical Employment Solutions and Progressive Personnel Services; Fenton, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 27, 2005 in response to a worker petition filed by a company official on behalf of workers at A.M.S.E.A., Inc., Fenton, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of November 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7050 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,307]

Agilent Technologies, Inc.; Semiconductor Test Solutions, Santa Rosa, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 10, 2005 in response to a petition filed by a company official on behalf of workers at Agilent Technologies, Inc., Santa Rosa, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of November, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7053 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,315]

C & J Jewelry Company, Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 10, 2005 in response to a worker petition filed by a company official on behalf of workers at C & J Jewelry Company, Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 29th day of November, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7054 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,303A]

CIBA Specialty Chemicals Corporation Textile Effects; Albemarle, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 9, 2005 in response to a petition filed by the State of North Carolina on behalf of workers at Ciba Specialty Chemicals Corporation, Textile Effects, Albemarle, North Carolina.

The investigation revealed that the subject facility closed more than one year prior to the date of the petition. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 29th day of November, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7052 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,404]

Dunlop Slazenger Manufacturing LLC Now Known as Westminster Manufacturing LLC, a Subsidiary of Dunlop Sports Group America, Inc., Including Leased Workers of Ranstad, Westminster, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 2005, applicable to workers of Dunlop Slazenger Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc., including leased workers of Ranstad, Westminster, South Carolina. The notice was published in the **Federal Register** on April 1, 2005 (70 FR 16848).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of golf balls.

New information provided by the company shows that in July 2005, only the Westminster, South Carolina location of Dunlop Slazenger Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc. became known as Westminster Manufacturing LLC, a subsidiary of Dunlop Sports Group America due to a change in ownership. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Westminster Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Dunlop Slazenger Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc., now known as Westminster Manufacturing LLC, a subsidiary of Dunlop Sports Group America, Inc. who was adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–56,404 is hereby issued as follows:

''All workers of Dunlop Slazenger Manufacturing LLC, now known as Westminster Manufacturing LLC, including on-site leased workers of Ranstad, a subsidiary of Dunlop Sports Group America, Inc., Westminster, South Carolina, who became totally or partially separated from employment on or after January 15, 2004, through March 1, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 28th day of November 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7046 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,228]

General Electric Newark Quartz, A Division of General Electric; Hebron, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 28, 2005 in response to a worker petition filed by a company official on behalf of workers at General Electric Newark Quartz, a division of General Electric, Hebron, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 30th day of November, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7051 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

[TA–W–57,746B]

Employment and Training Administration

Joan Fabrics Corporation, Mastercraft Fabrics LLC, Oakland Plant; Spindale, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 27, 2005, applicable to workers of Joan Fabrics Corporation, Mastercraft Fabrics, LLC, Oakland Plant, Spindale, North Carolina. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 72347).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce jacquard furniture fabric.

The review shows that there was a typographical error regarding the impact date which was set at November 21, 2005. It was the Department's intent to set the TAA eligibility impact date at November 11, 2005, the day following the expiration of the previous TAA certification (TA–W–53,285) issued for this worker group. To correct this error, the Department is amending the certification for TA–W–57,746B to set the impact date for eligibility to apply for TAA at November 11, 2005. The impact date regarding worker group eligibility to apply for ATAA remains set at August 5, 2004.

The amended notice applicable to TA–W–57,746B is hereby issued as follows:

''All workers of Joan Fabrics Corporation, Mastercraft Fabrics, LLC, Oakland Plant, Spindale, North Carolina (TA–W–57,746B) who became totally or partially separated from employment on or after November 11, 2005 through September 27, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. Workers of the Oakland Plant who became totally or partially separated from employment on or after August 5, 2004 through September 27, 2007, are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 23rd day of November 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7048 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–57,468]

Milwaukee Electric Tool Corporation, Brookfield Plant, Brookfield, WI; Notice of Negative Determination on Reconsideration

On September 12, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice of determination was published in the **Federal Register** on September 19, 2005 (70 FR 54965). Workers produced electric power tool accessories.

On June 29, 2005, the Department instituted the petition, dated June 24, 2005, filed by a representative of the State of Wisconsin on behalf of workers and former workers of Milwaukee Electric Tool Corporation, Brookfield Plant, Brookfield, Wisconsin. The Department initially denied Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) to workers and former workers of the subject company because while electric power tool accessory production at the subject facility ceased in December 2004, the subject company's customers did not increase import purchases of electric power tool accessories during the relevant period and production shifted from the subject facility to another domestic location.

In the request for reconsideration, the State representative sought clarification of the Department's negative determination. The State representative inferred that the subject company imported electric power tool accessories and alleged in a telephone conversation that a major customer was importing electric power tool accessories.

The Secretary of Labor may certify as eligible for TAA benefits only those workers who, during the twelve month period prior to the petition date, are employed in the subdivision that produced the article that is adversely affected by imports of like or directly competitive articles. Therefore, the Department requested information from the subject company in order to determine what articles were produced at the subject firm during the relevant period.

Specifically, the Department requested information from the subject company about sales, production, import, and employment figures for Milwaukee Electric Tool Corporation, Brookfield, Wisconsin for the periods 2003, 2004, January through June 2004, and January through June 2005.

The Department received information which confirmed that production ceased in December 2004, that the articles produced during the relevant period are various types of electric power tool accessories (sawzall blades, holesaws and self-feed bits), and that the subject company did not import those articles during the relevant period.

The Department also inquired into the allegation that a major customer was importing electric power tool accessories. The results of the reconsideration investigation refuted this allegation and confirmed that the subject company's major declining customers did not import articles like or directly competitive with those produced at the subject facility during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Milwaukee Electric Tool Corporation, Brookfield Plant, Brookfield, Wisconsin.

Signed at Washington, DC, this 29th day of November 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7047 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2005. Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 19, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of November 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 11/14/05 AND 11/18/05

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58316	Prewett Hosiery Sales (Comp)	Fort Payne, AL	11/14/05	10/15/05
58317	Prewett Hosiery Sales Corporation (Comp)	Fort Payne, AL	11/14/05	10/15/05
58318	VI Prewett and Son, Inc. (Comp)	Fort Payne, AL	11/14/05	10/15/05
58319	Johnco Hosiery, Inc. (Comp)	Fort Payne, AL	11/14/05	10/19/05
58320	Johnson Hosiery Mills, Inc. (Comp)	Fort Payne, AL	11/14/05	10/20/05
58321	McKeehan Hosiery Mill, Inc. (Comp)	Fort Payne, AL	11/14/05	10/21/05
58322	Pioneer Knitting Mills (Comp)	Fort Payne, AL	11/14/05	10/17/05
58323	Lala Ellen Knitting Mills (Comp)	Fort Payne, AL	11/14/05	10/20/05
58324	Cherokee Hosiery Mills, Inc. (Comp)	Fort Payne, AL	11/14/05	10/20/05
58325	Capstone Hosiery, LLC (Comp)	Fort Payne, AL	11/14/05	10/15/05
58326	Reliable Garment (State)	Los Angeles, CA	11/14/05	11/10/05
58327	Hewlett Packard (Comp)	Ontario, CA	11/14/05	11/10/05
58328	Motorola, Inc. (Comp)	Elgin, IL	11/14/05	11/11/05
58329	Unilever / Conopco, Inc. (Comp)	Asheboro, NC	11/14/05	11/14/05
58330	Tenneco Automotive, Inc. (State)	Salinas, CA	11/14/05	11/01/05
58331	Smucker Fruit Processing Center (State)	Salinas, CA	11/14/05	11/01/05
58332	Holte (Comp)	Los Angeles, CA	11/14/05	10/29/05
58333	Sonoco Products Company (Comp)	Chester, VA	11/14/05	11/01/05
58334	Armstrong World Industries, Inc. (USWA)	Lancaster, PA	11/14/05	11/11/05
58335	Powder Processing and Technology, LLC (Comp)	Valparaiso, IN	11/14/05	11/09/05
58336	Kimberly Clark Corporation (Comp)	Draper, UT	11/14/05	10/28/05
58337	Cone Denim, LLC (Comp)	Cliffside, NC	11/15/05	11/07/05
58338	Passion Parties, Inc. (Wkrs)	Brisbane, CA	11/15/05	11/14/05
58339	Saint-Gobain Crystals (Comp)	Washougal, WA	11/15/05	11/11/05
58340	Rolatape Corporation (Wkrs)	Spokane, WA	11/15/05	11/10/05
58341	Alene Candles (State)	Putnam, CT	11/15/05	11/14/05
58342	Studio Resource (State)	Milwaukee, OR	11/15/05	11/11/05
58343	Michael's of Oregon (State)	Oregon City, OR	11/15/05	11/11/05
58344	Bio-Rad Laboratories, Inc. (Wkrs)	Waltham, MA	11/15/05	11/10/05
58345	Formica Corporation (Comp)	Odenton, MD	11/15/05	11/14/05
58346	Weavetex, Inc. (Comp)	Jonesville, SC	11/15/05	11/14/05
58347	Imerys Pigments and Additives (USWA)	Dry Branch, GA	11/15/05	11/07/05
58348	General Electric (IBEW)	Bloomington, IN	11/15/05	11/15/05
58349	Joy Technologies, Inc. (IBB)	Mt. Vernon, IL	11/16/05	11/16/05
58350	Raytheon Aircraft Company (IAM)	Wichita, KS	11/16/05	10/24/05
58351	Air Control Science, Inc. (Wkrs)	Boulder, CO	11/16/05	11/15/05
58352	Cavert Wire Co. (Wkrs)	Lemont Furnace, PA	11/16/05	10/31/05
58353	James R. Lawson Trucking (Comp)	Mill Creek, PA	11/16/05	11/02/05
58354	Creform Corporation (Comp)	Greer, SC	11/16/05	11/15/05
58355	Exxon Mobil Corp. (Wkrs)	Exton, PA	11/16/05	11/15/05
58356	Rug Barn (The) (Comp)	Abbeville, SC	11/16/05	11/04/05
58357	JB Britches, Inc. (State)	San Fernando, CA	11/16/05	11/04/05
58358	Tai Seng Video Marketing, Inc. (Comp)	S. San Francisco, CA	11/17/05	11/16/05
58359	Strong Water Co. (State)	Moonachie, NJ	11/17/05	11/16/05
58360	Romech (Comp)	Red Oak, IA	11/17/05	11/16/05
58361	Sheet Metal Workers Union Local 483 (Comp)	Morrison, TN	11/17/05	11/16/05
58362	Stora Enso North America (Comp)	Stevens Point, WI	11/17/05	11/07/05
58363	Thomasville Furniture Ind., Inc. (Comp)	Thomasville, NC	11/17/05	11/15/05

TAA PETITIONS INSTITUTED BETWEEN 11/14/05 AND 11/18/05—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58364	Mine Safety Appliances (Wkrs)	Evans City, PA	11/17/05	11/15/05
58365	Phoenix Mecano, Inc. (Comp)	Romney, WV	11/17/05	11/15/05
58366	Teradyne, Inc. (State)	N. Reading, MA	11/17/05	11/15/05
58367	Springfield Wire, Inc. (Comp)	Springfield, MA	11/17/05	11/10/05
58368	Coherent, Inc. (Comp)	Auburn, CA	11/17/05	11/10/05
58369	Agere Systems (Wkrs)	Orlando, FL	11/17/05	11/03/05
58370	S. Lichtenberg and Co., Inc. (Comp)	Waynesboro, GA	11/18/05	11/17/05
58371	Carhartt, Inc. (Comp)	Glasgow, KY	11/18/05	11/17/05
58372	Temple-Inland Box Plant (State)	Newark, DE	11/18/05	11/17/05
58373	Irving Oil (Wkrs)	Brewer, ME	11/18/05	11/14/05
58374	Pacific MDF Products of SC (Comp)	Clio, SC	11/18/05	11/17/05
58375	Spartacraft, Inc. (Comp)	Connelly Springs, NC	11/18/05	11/15/05
58376	Lati USA, Inc. (Comp)	Summerville, SC	11/18/05	11/17/05
58377	EI Dupont (State)	Orange, TX	11/18/05	11/14/05
58378	Hoffmaster, Creative Expressions, Fonda Brands (Wkrs)	Glens Falls, NY	11/18/05	11/10/05
58379	SPX Contech (Comp)	Mishawaka, IN	11/18/05	11/01/05
58380	Dan Post Boot Co. (Comp)	Waverly, TN	11/18/05	11/18/05
58381	DSM Pharma Chemicals (Comp)	Greenville, NC	11/18/05	01/17/05

[FR Doc. E5–7055 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,790]

Science Applications International Corporation (SAIC), Piscataway, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C), an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Science Applications International Corporation (SAIC), Piscataway, New Jersey. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–57,790; Science Applications International Corporation (SAIC), Piscataway, New Jersey (November 28, 2005).

Signed at Washington, DC, this 30th day of November, 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–7056 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Permanent Labor Certification Program: Training and Employment Guidance Letter 8–05 in Response to Hurricanes Katrina, Rita, and Wilma

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice of Training and Employment Guidance Letter.

SUMMARY: The Employment and Training Administration has issued the Training and Employment Guidance Letter (TEGL) 8–05, dated November 16, 2005, to provide guidance to the National Processing Centers and Backlog Elimination Centers (collectively, Centers). TEGL 8–05 advises the Centers of accommodations to be made for employers impacted by Hurricanes Katrina, Rita, and Wilma regarding the filing and processing of permanent labor certifications. The Division of Foreign Labor Certification (DFLC) issued initial guidance regarding the impact of Hurricane Katrina on permanent labor certification processing on October 13, 2005, which was posted on the DFLC Web site at *http://atlas.doleta.gov/foreign/*. TEGL 8–05 replaces and supersedes all prior DFLC hurricane guidance. TEGL 8–05 is reprinted in the **Federal Register** in order to inform the public, and will be posted on the DFLC Web site.

DATES: TEGL 8–05 is effective November 16, 2005.

FOR FURTHER INFORMATION CONTACT: Rachel Wittman Cox, Senior Policy Advisor, Telephone: (202) 693–3010.

Dated: December 2, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration Advisory System U.S. Department of Labor Washington, DC 20210	Classification; Permanent Labor Certif. Correspondence Symbol; DFLC Issue Date; November 16, 2005.

Advisory: Foreign Labor Certification Training and Employment Guidance Letter No. 8–05.

To: FLC-National Processing Center Directors. FLC-Backlog Elimination Center Directors.

From: Emily Stover DeRocco, Assistant Secretary.

Subject: Response to Hurricanes Katrina, Rita, and Wilma—Deadlines and Correspondence for the Permanent Labor Certification Program.

1. *Purpose.* This memorandum outlines interim procedures for the management of mail related to applications in the permanent labor certification program and reflects the decision by the Division of Foreign Labor Certification (DFLC or Division) to postpone certain regulatory and procedural deadlines pertaining to applications affected by Hurricanes Katrina, Rita, and Wilma. DFLC issued guidance for Hurricane Katrina on

October 13, 2005. Stakeholders raised certain questions in response to that guidance. Therefore, this guidance replaces and supersedes all prior DFLC hurricane guidance. This guidance will be posted on DFLC's Web site and published in the **Federal Register**.

2. *References.* DFLC Field Memorandum, ''Response to Hurricane Katrina'' (October 13, 2005).''

3. *Background.* In late August 2005, Hurricane Katrina battered the Gulf Coast of the United States, devastating large areas of Louisiana, Alabama, and Mississippi. In late September 2005, Hurricane Rita hit the Gulf Coast of the United States, including parts of Louisiana and Texas. In late October 2005, Hurricane Wilma devastated parts of Florida. DFLC will work closely with our stakeholders to minimize disruption to the labor certification process as the country works through these disasters. This guidance outlines the Division's emergency policy related to deadlines and correspondence for permanent program applications related to Katrina, Rita, and Wilma impacted areas.

RESCISSIONS DFLC Field Memorandum, "Response to Hurricane Katrina" (October 13, 2005)	Expiration Date March 2006

4. *Discussion.*

A. *Mail delivery.* Currently, the Post Office and other mail delivery services are not delivering mail to certain areas impacted by Hurricanes Katrina, Rita, and Wilma. In addition, many businesses, including law firms, have been destroyed by these hurricanes and subsequent flooding. Therefore, until further notice, National Processing Centers, Backlog Elimination Centers, and their satellite offices (collectively, the Centers) should not send correspondence to zip codes in the affected regions where there is either no mail service or partial mail service, as shown on the United States Postal Service Web site at *http://www.usps.com/communications/news/serviceupdates.htm?from=bannercommunications&page=katrina.*

Normally, copies of correspondence from DFLC regarding permanent labor certification applications are sent to both the employer and the legal representative named on the application. DFLC will continue processing every case to the extent feasible. However, to avoid potential misunderstandings regarding the status of a case, DFLC will hold all correspondence and case communications where one of the recipients of the correspondence is in an area with no or partial mail delivery, until a new address is provided by the employer or attorney in accordance with the instructions below.

B. *Advising DFLC of new mailing addresses and contact information.* Because some employers and/or their attorneys may be relocating from disaster-impacted areas on a temporary or permanent basis, we have established e-mail addresses to receive new contact information. We will verify this new information as needed. Employers or their attorneys are asked to contact the Center with jurisdiction over each particular permanent labor certification case as follows:

Katrina.dflc@phi.dflc.us for the Backlog Elimination Center in Philadelphia; *Katrina.dflc@dal.dflc.us* for the Backlog Elimination Center in Dallas; *Katrina.dflcatlanta@dol.gov* for the National Processing Center in Atlanta; or *Katrina.dflcchicago@dol.gov* for the National Processing Center in Chicago.

The subject line of each e-mail should designate which hurricane(s) affected the application. E-mailed notices must include: the new mailing address to which correspondence should be forwarded, any new telephone and facsimile information, and sufficient information to identify each affected application(s), including the case number(s). (Please note: global requests for a mailing address change will not be honored.) In the case of temporary or interim relocations, please note the time period when the new address/phone numbers will be in effect. Any subsequent changes to the employer or attorney's mailing address must also be e-mailed to the addresses above.

C. *Case file.* Due to Hurricanes Katrina, Rita, and Wilma, DFLC will accept new addresses for purposes of mailing only. Addresses will not be added or amended on pending applications, as a new address can sometimes change key elements of an application '' for example, a new work location can change the applicable prevailing wage rate and area of intended employment. Instead, for purposes of mailing to a new address, the Centers will create a brief cover letter to add to the prepared correspondence. This cover letter will document the date the new address request was received and the new address itself. Center staff will then annotate the electronic case file to record the new address and the type of correspondence sent to the new address on a given date.

D. *Due dates.* To address Hurricanes Rita and Wilma, and in response to stakeholder questions about the earlier guidance on Hurricane Katrina, DFLC provides the information below to clarify the applicability of due date deadline extensions.

For those permanent labor certification applications where either the employer or its attorney or agent is located in a Katrina, Rita, or Wilma disaster area (the counties and parishes that have been or are later designated by the Federal Emergency Management Agency as disaster areas eligible for Individual or Public Assistance because of the devastation caused by Hurricane Katrina), DFLC is postponing certain regulatory and procedural deadlines. Specifically, DFLC is extending deadlines for employer responses to Backlog Elimination Center (BEC)-issued 45-day letters (also known as continuation letters), BEC-issued Notices of Findings, National Processing Center (NPC)-issued audit requests, NPC requests for additional information, and employer appeals. In other words, any of these specifically listed application materials with a due date during the period described below will be considered timely if received by the appropriate Center by the date specified for each hurricane:

For Hurricane Katrina: If the specific deadlines listed above fall during the period from August 29, 2005, until December 1, 2005, the employer's submission will be considered timely if received by the appropriate NPC by December 1, 2005.

For Hurricane Rita: If the specific deadlines listed above fall during the period from September 23, 2005, until January 1, 2006, the employer's submission will be considered timely if received by the appropriate NPC by January 1, 2006.

For Hurricane Wilma: If the specific deadlines listed above fall during the period from October 24, 2005, until February 1, 2006, the employer's submission will be considered timely if received by the appropriate NPC by February 1, 2006.

These extensions apply even if the employer, attorney, or agent has

relocated and resumed operations outside the disaster area.

The list of counties and parishes designated by FEMA as disaster areas eligible for Individual or Public Assistance as a result of Hurricanes Katrina, Rita, and Wilma has been published and amended in the **Federal Register**, and is available at *http://www.fema.gov/news/disasters.fema.* For the hardest hit areas, DFLC will closely monitor progress and may extend these deadlines even further. DFLC will work with stakeholders covered by an extension provided above who may receive written communications applying an earlier or incorrect deadline. We will consider other deadline issues on a case-by-case basis.

E. *Filing Date Extensions for PERM applications impacted by Hurricane Wilma, Rita, or Katrina.* Under current PERM regulations, employers must begin their recruitment efforts no more than 180 days prior to filing a permanent labor certification application, and must complete most recruitment measures at least 30 days prior to filing. Due to recent hurricanes, employers or their attorneys within a FEMA-designated disaster area may be unable to comply with the requirement of completing their recruitment efforts within the regulatory 180-day time frame. Therefore, DFLC is extending recruitment validity periods to allow employers or their attorneys located within a FEMA-designated disaster area (as defined above) to file their permanent labor certification application by seventy-five (75) days after the date of the last of the three hurricanes, so long as recruitment was begun within 180 days prior to the specific hurricane. The last of the three hurricanes, Wilma, hit on October 24, 2005, and 75 days after that date is January 7, 2006. The specific dates applicable to each hurricane are as follows:

Hurricane date	Recruitment must have begun by (180 days prior to hurricane):	Filing must occur by:
Katrina—Aug. 29, 2005	March 2, 2005	January 7, 2006.
Rita—Sept. 23, 2005	March 27, 2005	January 7, 2006.
Wilma—Oct. 24, 2005	April 27, 2005	January 7, 2006.

Those hurricane-affected employers who may have already been denied due to the ''staleness'' of the recruitment on an application may file a request for reconsideration with the appropriate Certifying Officer.

Those employers wishing to submit an application under this guidance, where the recruitment period lasted longer than 180 days, must submit their application by mail to the appropriate National Processing Center. The employer must include a cover letter (signed by the employer or the employer's representative) explaining the particular circumstances that caused the employer to fall within the boundaries of this guidance. Please note: Under the regulations, recruitment steps must be completed at least 30 days before filing the application. This requirement will still be enforced.

The Division will continue to revisit issues surrounding Hurricanes Katrina, Rita, and Wilma in the coming months, as needed.

5. *Action Required.* FLC Center directors are requested to inform certifying officers and staff of the information in this guidance letter and ensure they take appropriate action.

6. *Inquiries.* Please direct questions to the appropriate National Office staff.

[FR Doc. 05–23784 Filed 12–7–05; 8:45 am]

BILLING CODE 4510–30–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27173; 812–13179]

MGI Funds and Mercer Global Investments, Inc.; Notice of Application

December 1, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: MGI Funds (the ''Trust'') and Mercer Global Investments, Inc. (the ''Adviser'').

Filing Dates: The application was filed on March 23, 2005, and amended on November 3, 2005, and November 22, 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 December 27, 2005, and should be accompanied by proof of service on the 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, 1166 Avenue of the Americas, New York, NY 10036.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Mary Kay Frech, Branch Chief, 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 Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust offers, or will offer, shares in seven series (each a ''Fund'' and collectively, the ''Funds''), each with separate investment objectives, policies and restrictions.[1] The Adviser

[1] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment

Continued

is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and provides investment management services to the Funds pursuant to an investment management agreement (''Advisory Agreement'') with the Trust. The Advisory Agreement has been approved by the initial shareholder of each Fund and by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'').

2. Under the terms of the Advisory Agreement, the Adviser is authorized to provide each Fund with investment research, advice and supervision, and to furnish an investment program for each Fund. The Advisory Agreement also authorizes the Adviser, subject to Board approval, to enter into investment sub-advisory agreements (''Subadvisory Agreements'') with one or more subadvisers (''Subadvisers''). Each Subadviser is, and will be, registered as an investment adviser under the Advisers Act. The Adviser monitors and evaluates the Subadvisers and recommends to the Board their hiring, retention or termination. Subadvisers recommended to the Board by the Adviser have been, or will be, selected and approved by the Board, including a majority of the Independent Trustees. Each Subadviser has discretionary authority to invest the assets or a portion of the assets of a particular Fund. The Adviser compensates each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser'').

company or series thereof that: (a) Is advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. All references to the term ''Adviser'' herein include (a) the Adviser, and (b) an entity controlling, controlled by, or under common control with the Adviser. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

4. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Adviser to each Subadviser. An exemption is requested to permit the Trust to disclose for each Fund (as both a dollar amount and as a percentage of each Fund's net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Subadviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Subadvisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such 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. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that some Subadvisers use a ''posted'' rate schedule to set their fees. Applicants state that while Subadvisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will allow the Adviser to negotiate more effectively with each Subadviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus

containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Subadviser. To meet this obligation, the Fund will provide shareholders within 90 days of the hiring of a new Subadviser with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. Each Fund will comply with the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date for the rule (''Compliance Date''). Prior to the Compliance Date, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

6. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

9. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or director or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7058 Filed 12–7–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52870; File No. SR–Amex–2005–091]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Trading Pursuant to Unlisted Trading Privileges of the iShares® Lehman TIPS Bond Fund

December 1, 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 13, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On November 22, 2005, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to trade shares (the ''Fund Shares'' or ''Shares'') of the iShares® Lehman TIPS Bond Fund (ticker symbol: TIP) (the ''Fund''),[4] pursuant to unlisted trading privileges (''UTP'').

The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.amex.com*), at the principal office of the Exchange, 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 Amex included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in sections A, B, and C below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal.

[4] iShares® is a registered trademark of Barclays Global Investors, N.A.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade Fund Shares which are Index Fund Shares under Amex Rules 1000A *et seq.*, pursuant to UTP. The Commission previously approved the original listing and trading of the Fund on the New York Stock Exchange, Inc. (''NYSE'').[5] The Fund is a separate series of the iShares Trust (the ''Trust''). Lehman Brothers maintains and calculates the Lehman Brothers U.S. Treasury Inflation Notes Index (the ''Index''). The Index will not be calculated or disseminated intra-day because Lehman Brothers does not calculate or disseminate intra-day values for the Index. The value and return of the Index are calculated and disseminated each business day, at the end of the trading day, by Lehman Brothers. Additional information about the Fund is also available at *http://www.iShares.com*.

The investment objective of the Fund is to provide investment results that correspond generally to the performance of the Index. The Index seeks results that correspond generally to the price and yield performance, before fees and expenses, of the inflation-protected sector of the United States Treasury market, as defined by the Index. Inflation-protected public obligations of the U.S. Treasury, also called ''TIPS,'' are securities issued by the U.S. Treasury that are designed to provide inflation protection to investors. TIPS are income-generating instruments whose interest and principal payments are adjusted for inflation.

(a) Dissemination of Information About the Fund Shares

Quotations for and last sale information regarding the Fund are disseminated through the Consolidated Tape Association (''CTA''). The net asset value (''NAV'') of the Fund is calculated each business day, normally at the close of regular trading of the NYSE, and is published in a number of places, including *http://www.iShares.com* and through the facilities of the CTA. According to the Fund's prospectus, Investors Bank & Trust Company, the administrator, custodian and transfer agent for the Fund, determines the NAV for the Fund as of the close of regular trading on the NYSE (ordinarily 4 p.m., Eastern time or ''ET'') on each day that the NYSE is open for trading.[6] The Fund and the index calculation methodology for the Index are both described in more detail in the NYSE Order.

In order to provide updated information relating to the Fund for use by investors, professionals, and persons wishing to create or redeem Fund Shares in creation unit aggregations (''Creation Units''), the NYSE disseminates, through the facilities of the CTA, the indicative optimized portfolio value (''IOPV''), calculated by Bloomberg L.P., every fifteen (15) seconds during the trading hours for the Shares of 9:30 a.m. to 4:15 p.m. ET.

(b) Trading Rules

The Exchange deems the Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Fund Shares on the Exchange will be 9:30 a.m. to 4:15 p.m. ET. The Shares trade with a minimum price variation of $0.01.

Amex Rule 190 generally precludes certain business relationships between an issuer and the specialist in the issuer's securities. Exceptions in the rule permit specialists in Fund Shares to enter into Creation Unit transactions to facilitate the maintenance of a fair and orderly market. Commentary .04 to Amex Rule 190 specifically applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including the Funds Shares, as eligible for this treatment.[7]

The rules of the Exchange require its members to deliver a prospectus or product description to investors purchasing Shares of the Fund prior to or concurrently with the confirmation of a transaction in such Shares. The Exchange notes, however, that although Amex Rule 1000A provides for delivery of written descriptions to customers of funds that have received an exemption from section 24(d) of the Investment Company Act of 1940 and the Trust has received such an exemption, there is at this time no written description available for this Fund. The Exchange will advise its members and member organizations that delivery of a prospectus in lieu of a written description would satisfy the requirements of Amex Rule 1000A.

The Exchange will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt akin to a halt based on Amex Rule 117 and/or a halt because dissemination of the IOPV and/or underlying index value has ceased or (b) the primary market delists the Shares.[8]

(c) Surveillance

The Exchange notes that the Index is broad-based and has components with significant market capitalizations and liquidity.[9] Nevertheless, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares.

(d) Information Circular

In connection with the trading of the Shares of each Fund, the Amex will inform its members in an Information Circular of the special characteristics and risks associated with trading of the Shares, such as, a description of the Fund and associated Shares, how Fund Shares are created and redeemed in Creation Units (*e.g.*, that Fund Shares are not individually redeemable), applicable Exchange rules, dissemination information, trading information, the applicability of suitability rules, and a discussion of any relief provided by the Commission or the staff from any rules under the Act. Additionally, in the Information Circular, the Exchange will advise its

[5] *See* Securities Exchange Act Release No. 48881 (December 4, 2003), 68 FR 69739 (December 15, 2003) (SR–NYSE–2003–39) (''NYSE Order''). The Funds commenced trading on the NYSE on December 5, 2003.

[6] The Web site for the Trust, *http://www.iShares.com*, will make available a variety of other relevant information about the Shares.

[7] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR–Amex–90–31) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[8] Telephone conversation between Edward Cho, Staff Attorney, Division of Market Regulation, Commission, and Jeffrey Burns, Associate General Counsel, Amex, on November 17, 2005.

[9] *Id.*

members to deliver to investors purchasing Shares of the Fund a prospectus, as described above, prior to or concurrently with the confirmation of a transaction in such Shares. The Information Circular will also discuss the information that will be publicly available about the Shares.

The Information Circular will also remind members of their suitability obligations, including those under Amex Rule 411, which imposes a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Shares.[10]

2. Statutory Basis

The proposed rule change, as amended, is consistent with section 6(b) of the Act[11] in general, and furthers the objectives of section 6(b)(5)[12] in particular, in that it 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[13] because it deems the Fund Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–091 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–Amex–2005–091. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–091 and should be submitted on or before December 29, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[14] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with section 12(f) of the Act,[16] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[17] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[18] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[19] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. Amex rules deem the Shares to be equity securities, and thus, trading in Shares will be subject to the Exchange's existing rules governing the trading of equity securities.[20]

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, the NYSE disseminates through the facilities of CTA an updated

[10] *Id.*

[11] 15 U.S.C. 78s(b).

[12] 15 U.S.C. 78s(b)(5).

[13] 17 CFR 240.12f–5.

[14] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 5 U.S.C. 78*l*(f).

[17] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[18] *See* NYSE Order, *supra* note 5.

[19] 17 CFR 240.12f–5.

[20] The Commission notes that Commentary .04 to existing Amex Rule 190 will permit a specialist in the Shares to create or redeem Creation Units of this Fund to facilitate the maintenance of a fair and orderly market. The Commission previously has found Commentary .04 to Amex Rule 190 to be consistent with the Act. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606, 10612 (March 14, 1996) (SR–Amex–95–43).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

IOPV for the Shares every 15 seconds from 9:30 a.m. to 4:15 p.m. E.T.

The Exchange will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IOPV and/or underlying index value has ceased or (b) the primary market delists the Shares.

In support of this proposed rule change, the Exchange has made the following representations:

1. Amex has appropriate rules to facilitate transactions in this type of security;

2. Amex surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange;

3. Amex will distribute an Information Circular to its members prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading such shares;

4. Amex will require a member with a customer that purchases the Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Circular; and

5. Amex will cease trading in the Shares if (a) the primary market stops trading the Shares because of a regulatory halt similar to a halt based on Amex Rule 117 and/or a halt because dissemination of the IOPV and/or underlying index value has ceased or (b) the primary market delists the Shares.

This approval order is conditioned on Amex's adherence to these representations.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted earlier, the Commission previously found that the listing and trading of these Shares on the NYSE are consistent with the Act.[22] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2005–091), as amended, is hereby approved on an accelerated basis.[23]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7057 Filed 12–7–05; 8:45 am]

BILLING CODE 8010–01–P

[22] *See* NYSE Order, *supra* note 5.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52871; File No. SR–CBOE–2005–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees and a Fee Waiver for Options on the Mini-SPX

December 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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. On December 1, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The CBOE submitted the proposed rule change under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to establish fees for options on the Mini-SPX (''XSP''). The Exchange also proposes to waive all fees for trading in XSP options beginning with the launch of trading through January 31, 2006. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. XSP Fees

The Exchange proposes to establish fees for XSP options, which commenced trading on October 25, 2005. XSP options are options that are based on one-tenth the value of the Standard & Poor's 500 Index. XSP options trade on CBOE's Hybrid 2.0 trading system.

The transaction fee for customer orders in XSP options will be $.15 per contract. The market-maker transaction fee will also be $.15 per contract.[6] The Exchange believes the $.15 market-maker transaction fee will act as an incentive for market-makers to provide liquidity in the XSP product. Member firm proprietary transaction fees will be $.20 for facilitation of customer orders and $.24 for non-facilitation orders. The broker-dealer transaction fee will be $.25 per contract, the remote market-maker transaction fee will be $.26 per contract, and the non-member market-maker fee will be $.17 per contract.

As per the current CBOE Fee Schedule, the floor brokerage fee for XSP options will be $.04 per contract and $.02 per contract for crossed orders. The Marketing Fee and the RAES Access Fee will not apply.

b. Fee Waiver

The Exchange proposes to waive all fees for trading in XSP options beginning with the launch of trading in XSP options through January 31, 2006.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed to reduce the XSP non-member market-maker transaction fee to $.17 per contract regardless of the premium.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] XSP options trade without a Designated Primary Market-Maker (''DPM''), Electronic-DPM (''e-DPM'') or Lead Market-Maker (''LMM''), under CBOE's index option hybrid rules.

Following the fee waiver period, the Exchange will begin assessing the fees set forth above. The Exchange has decided to waive all XSP fees to promote the launch of the XSP product.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the CBOE. At any time within 60 days of the filing of the proposed rule change, as amended, 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.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–88 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–CBOE–2005–88. 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 offices of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–88 and should be submitted on or before December 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7067 Filed 12–7–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] The effective date of the original proposed rule change is October 25, 2005 and the effective date of the amendment is December 1, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 1, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52872; File No. SR–CBOE–2005–92]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Prohibit the Practice of Unbundling Orders to Maximize Rebates of Fees

December 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 Exchange. 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

CBOE proposes to adopt a new rule to prohibit the practice of unbundling orders in order to maximize rebates of fees. The text of the proposed rule change appears below. Additions are *in italics.*

* * * * *

Rule 4.23—Unbundling of Orders to Maximize Rebates of Fees

Rule 4.23. No member shall divide an order into multiple smaller orders for the primary purpose of maximizing rebates of fees resulting from the execution of such orders, or any other similar payment of value to the 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, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE rules to expressly prohibit the practice of tape shredding, *i.e.*, the practice of splitting large orders into multiple smaller orders for the purpose of maximizing market data revenues. The Commission has requested that all U.S. self-regulatory organizations implement rule changes to inhibit the practice of tape shredding.

CBOE agrees that the practice of ''tape shredding'' is a distortive practice. For options trading, CBOE's members do not have any incentive to engage in this practice because CBOE does not share its market data revenue in options with its members. With regard to its limited stock trading, until very recently CBOE did not share market data revenue with its members.[3] Nonetheless, because CBOE shares the Commission's concerns about this dubious practice, CBOE agrees that it would be appropriate for CBOE to amend its rules to expressly prohibit its members from dividing single orders into multiple orders for the sole purpose of maximizing market data rebates.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

[3] CBOE recently adopted a revenue sharing program with its Designated Primary Market-Makers and Market-Makers for trades in Tape B securities, of which CBOE trades a very small number, upon the launch of CBOE's new stock trading platform. Because CBOE's revenue sharing plan does not propose to share revenue with order flow providers, only with CBOE's DPMs and Market-Makers in these Tape B securities, CBOE does not believe that its plan promotes the breaking up of single orders into multiple orders to maximize market data rebates.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no 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

The Exchange has neither solicited nor received comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–92 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–CBOE–2005–92. 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 offices of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–92 and should be submitted on or before December 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7071 Filed 12–7–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52868; File No. SR–OCC–2005–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Margin Deposits for a Customers' Lien Account

December 1, 2005

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'',[1] notice is hereby given that on November 9, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 U.S.C. 240.19b–4(f)(1).

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 would clarify that securities held for the account of a securities customer (other than a market maker) may be deposited as margin in a customers' lien account.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would clarify that securities held for the account of a securities customer (other than a market maker) may be deposited as margin in a customers' lien account. In July 2005, the Commission approved an OCC proposed rule change that permitted clearing members to clear trades of certain securities customers in a new type of account, called a customers' lien account, which is subject to portfolio margining.[5] Although it was clearly intended that clearing members be permitted to deposit securities held for the account of securities customers participating in portfolio margining in customers' lien accounts, the necessary conforming change to OCC Rule 604(b)(5) was inadvertently omitted. The purpose of this rule filing is to make that conforming change.

OCC believes the proposed changes are consistent with Section 17A of the Act[6] and the rules and regulations thereunder applicable to OCC because such changes promote the prompt and accurate clearance and settlement of securities transactions by making a conforming change to OCC's rules. The proposed rule change is not inconsistent with OCC's rules, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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[7] and Rule 19b–4(f)(1)[8] 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 such 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–OCC–2005–18 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–OCC–2005–18. 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 OCC and on OCC's Web site at *http://www.optionsclearing.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–OCC–2005–18 and should be submitted on or before December 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–23801 Filed 12–7–05; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52869; File No. SR–OCC–2005–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Gasoline Index Futures

December 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 26, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] See Securities Exchange Act Release No. 52030 (July 14, 2005), 70 42405 (July 22, 2005) [File No. SR–OCC–2003–04].

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) thereunder [3] making the proposal effective upon filing with the Commission. 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 would permit OCC to clear and settle cash-settled futures contracts proposed to be listed by the CBOE Futures Exchange (''CFE'') that are intended to track the price of reformulated, regular octane gasoline sold through retail outlets (''Gasoline Index Futures'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Gasoline Index Futures

The purpose of this rule change is to permit OCC to clear and settle Gasoline Index Futures contracts proposed to be listed by CFE. Gasoline Index Futures will have as their underlying interest indexes of retail gasoline prices (''Gasoline Indexes'') published by the Energy Information Administration (''EIA'') of the U.S. Department of Energy. The Gasoline Indexes are compiled and released each Monday evening from surveys of prices at retail gasoline outlets conducted by the EIA each Monday morning. CFE is proposing to list Gasoline Index Futures on six underlying Gasoline Indexes, one for the entire United States and one for each of five ''Petroleum Administration for Defense Districts.'' Gasoline Index Futures would cease trading on the third Friday of the expiration month and would settle on the following Tuesday using as a final settlement price (a) The Gasoline Index levels published on the Monday preceding the settlement date multiplied by (b) a contract multiplier of 10,500. For example, a Gasoline Index of $3.00 per gallon would result in a final settlement price of $31,500.

OCC currently clears and settles futures on stock indexes. Although Gasoline Index Futures will be the first non-stock index futures contracts cleared and settled by OCC, OCC can clear them under its existing By-Laws and Rules applicable to clearing futures contracts with the minor amendments proposed in this filing. OCC will collect margin and make variation payments with respect to Gasoline Index Futures as in the case of any other futures contract. However, because the Gasoline Indexes are published only once a week, OCC will be required to estimate one-day volatilities in calculating initial margin. Because OCC will estimate volatilities conservatively, margins are likely to be higher than if underlying prices were available on a daily basis. Gasoline Index Futures will be cleared under the current clearing agreement between OCC and CFE subject only to the execution by OCC and CFE of a new Schedule C listing the Gasoline Indexes as permissible underlyings.

B. Rule Changes

The terms Broad-Based Index Future and Narrow-Based Index Future were defined in OCC's rule filing permitting it to clear security futures in a manner that limited OCC's futures clearing and settlement activities to futures on narrow-based stock indexes. There is no longer a need to describe any such limitation because OCC is registered with the Commodity Futures Trading Commission (''CFTC'') as a derivatives clearing organization, and the Commission and the CFTC have previously approved rules permitting OCC to clear commodity futures contracts. In order to simplify OCC's Rules and to provide for non-stock index futures, those terms are removed, and the definition of ''Index Future'' is being amended to apply to a future on an index of securities or commodities. Like the definition of Index Future, Sections 4(a) and (b) of Article XII of OCC's By-Laws are amended so that underlying indexes need not consist only of indexes of securities.

A new sentence is added at the end of Article XII, Section 4(c) to account for the possibility that if the Gasoline Indexes (or similar indexes not derived from market-traded instruments) become unavailable, a substitute index may not be available. In that instance, OCC would terminate the index future and fix a settlement price in accordance with Section 5, and any options on such future would be automatically exercised if in-the-money based on the settlement price set by OCC. Options that were out-of-the-money would terminate.

Section 5 is amended to account for the fact that the prices that are used to calculate Gasoline Indexes are not derived from an organized market. Currently, Section 5(a) assumes that the price or value of all underlying interests or the constituents of all underlying indexes will be taken from organized markets where such underlying interests or constituents are traded. Because different rules are necessary when the prices or values of underlying interests or constituents are not available from an organized market, introductory language is added to Section 5(a) to limit that paragraph's applicability to market-traded interests or constituents, and a new paragraph (b) is added so that OCC may act when a price or value of an underlying interest or constituent that is not traded on a market is unavailable. Current paragraph (a)(2) is being redesignated as (c)(2), and a new provision is added to that paragraph so that OCC may (i) fix the final settlement price for a non-market-traded underlying interest or constituent using a price or value or a combination or average of prices or values deemed appropriate by OCC or (ii) simply fix the final settlement price at the most recently determined settlement price for the future. Because in the latter case the final settlement price would equal the previous settlement price, no final variation payment would be made.

The introductory paragraph to Chapter XIII is simplified by replacing lists of underlying interests and contracts cleared and settled by OCC with more generic terms incorporating all underlying interests and all futures and futures options OCC is permitted to clear under its current rules. This change conforms that paragraph to the corresponding introductory paragraph in Article XII.

The proposed changes to OCC's By-Laws and Rules are consistent with Section 17A of the Act [5] and the rules and regulations thereunder applicable to OCC because they are designed to promote the prompt and accurate clearance and settlement of derivative transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] 15 U.S.C. 78q–1.

clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change is not inconsistent with any other provision of the By-Laws and Rules of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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)(iii) of the Act [6] and Rule 19b–4(f)(4) [7] thereunder because it effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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–OCC–2005–16 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–OCC–2005–16. 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 OCC and on OCC's Web site at *http://www.optionsclearing.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–OCC–2005–16 and should be submitted on or before December 29, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7065 Filed 12–7–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(F)(4).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5242]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Open Competition Seeking Professional Exchanges Programs in Africa, East Asia, Eurasia, Europe, the Near East, North Africa, South Asia and the Western Hemisphere

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C–06–01.

Catalog of Federal Domestic Assistance Number: 19.415.

Key Dates:

Application Deadline: February 9, 2006.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for grants that support exchanges and build relationships between U.S. non-profit organizations and civil society groups in Africa, East Asia, Eurasia, Europe, the Near East, North Africa, South Asia and the Western Hemisphere. U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of The Professional Exchanges Program. Projects should promote mutual understanding and partnerships between key professional groups in the United States and counterpart groups in other countries through multi-phased exchanges taking place over one to three years. Proposals should further transformational democracy which seeks to encourage and support the development of more democratic societies and institutions, with a view toward creating a more stable world. To the fullest extent possible, programs should be two-way exchanges supporting roughly equal numbers of participants from the U.S. and foreign countries.

Proposed projects should promote the transformation of institutional and individual understanding, foster dialogue, share expertise and develop capacity in one of five thematic areas: (1) Responsible Governance; (2) Developing Professional Standards in Media; (3) Creating Economic Growth to Fight Poverty and Strengthen Democracy; (4) Dialogue on Intellectual Property or Municipal Governance as a Device for Bridging Conflict; and (5) Integration of Marginalized Populations, Particularly Youth, in Western Europe. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, to promote good governance, to contribute to conflict prevention and management, and to build respect for cultural expression and identity in a world that is experiencing rapid globalization. Projects should be structured to allow American professionals and their international counterparts in target countries to develop a common dialogue for dealing with shared challenges and concerns. Projects should include current or potential leaders who will effect positive change in their communities. Exchange participants

might include community leaders, elected and professional government officials, religious leaders, educators, and proponents of democratic ideals and institutions, including for example, the media and judiciary, or others who influence the way in which different communities approach these issues. The Bureau is especially interested in engaging socially and economically diverse groups that may not have had extensive contact with counterpart institutions in the United States. *The Bureau encourages the submission of proposals that engage these audiences in countries with significant Muslim populations, or that engage educators or groups that influence youth in innovative ways.*

Applicants may not submit proposals that address more than one region or for countries that are not designated in the RFGP.

For the purposes of this competition, eligible regions are Africa, East Asia, Eurasia, Europe, the Near East, North Africa, South Asia, and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed.

Requests for grant proposals on the creation, performance, or presentation of artistic work will be announced in a separate competition.

Please refer to section III.3 for information on eligibility requirements.

I. Funding Opportunity Description

Authority

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Bureau seeks proposals that will address the following priority themes: (1) Responsible Governance; (2) Developing Professional Standards in Media; (3) Creating Economic Growth to Fight Poverty and Strengthen Democracy; (4) Dialogue on Intellectual Property or Municipal Governance as a Device for Bridging Conflict; and (5) Integration of Marginalized Populations, Particularly Youth, in Western Europe.

The competition is based on the premise that people-to-people exchanges encourage and strengthen understanding of democratic values and nurture the social, political, and economic development of societies. Exchanges supported by institutional grants from the Bureau should operate at two levels: they should enhance partnerships between U.S. and foreign institutions, and they should establish a common dialogue to develop practical solutions for shared problems and concerns. The Bureau is particularly interested in projects that will create mutually beneficial and self-sustaining linkages between professional communities in the U.S. and their counterpart communities in other countries. Applicants must identify the U.S. and foreign organizations and individuals with whom they are proposing to collaborate and describe previous cooperative activities, if any. Information about the mission, activities, and accomplishments of partner organizations should be included in the submission. Proposals should contain letters of commitment or support from partner organizations for the proposed project. Applicants should clearly outline and describe the role and responsibilities of all partner organizations in terms of project logistics, management and oversight. Proposals that show strong prospects for enhancing existing long-term collaboration or establishing new collaborative efforts among participating organizations will be deemed more competitive under the Program Planning and Ability to Achieve Objectives review criterion, per item V.1 below.

Competitive proposals will include the following:

- A brief description of the problem as it relates to the target country or region. (Proposals that request resources for an initial needs assessment will be deemed less competitive under the review criterion Program Planning and Ability to Achieve Objectives, per item V.1 below.);
- A clear statement of program objectives and projected outcomes that respond to Bureau goals for each theme in this competition. Desired outcomes should be described in qualitative and quantitative terms. (See the Program Monitoring and Evaluation section per item V.1 below, for more information on project objectives and outcomes.);
- A proposed timeline, listing the optimal schedule for each program activity;
- A description of participant recruitment and selection processes;
- Letters of support from foreign and U.S. partners. (*Letters from prospective partner institutions should demonstrate an ability to arrange and conduct U.S. and overseas activities.*);
- An outline of the applicant organization's relevant expertise in the project theme and country(ies);
- An outline of relevant experience managing previous exchange programs;
- Resumes of experienced staff who have demonstrated a commitment to monitor projects and ensure implementation;
- A comprehensive plan to evaluate whether program outcomes achieved met the specific objectives described in the narrative. (See the Program Monitoring and Evaluation section [IV.3d.d below] for further guidance on evaluation.);
- A post-grant plan that demonstrates how the grantee plans to maintain contacts initiated through the program. Applicants should discuss ways that U.S. and foreign participants or host institutions could collaborate and communicate after the ECA-funded grant has concluded. (See Review Criterion #5, per item V.1 below for more information on post-grant activities.)
- Successful projects will demonstrate the importance Americans place on community service as an element of a strong civil society and may include ideas and projects to strengthen civil society through community service either during participants' stay in the U.S. or upon their return to their countries.
- In addition to addressing the themes described below, proposals should develop partner organizations' capacity in such areas as strategic planning, performance management, fund raising, financial management, human resources management, and decision-making.

It is important that the proposal narrative clearly state the applicant's commitment to consult closely with the Public Affairs Section of the U.S. embassy in the relevant country(ies) to develop plans for project implementation and to select project participants. Proposals should also acknowledge U.S. embassy involvement in the final selection of all participants. Applicants should state their willingness to invite representatives of the embassy(ies) and/or consulate(s) to participate in program sessions or site visits. Applicants are also *strongly*

encouraged to consult with Public Affairs Officers at U.S. embassies in relevant countries as they develop proposals responding to this RFGP. Narratives should state that all material developed for the project will prominently acknowledge Department of State ECA Bureau funding for the program. In addition, before submitting a proposal, applicants are strongly encouraged to be in touch with the Washington, DC-based State Department contact for the themes/regions listed after each program description below.

Themes

I. Responsible Governance

• Educate citizens and youth influencers, including teachers and leaders of youth organizations, on rights and responsibilities in a democracy and empower them to participate in the development of public policy, public discussions and debates by developing their individual skills and organizations. Projects should engage government and NGO leaders in dialogue.

• Engage government leaders—national and local—in the importance of citizen participation in governmental decision-making and develop/examine specific practices that promote an effective, accountable, transparent and responsive government and public administration that is crucial to the development of democracy. Projects should engage government and NGO leaders in dialogue.

Audience: Representatives from government and non-governmental organizations, teachers, community leaders.

Ideal Program Model

• U.S. grantee identifies U.S. citizens to conduct in-country seminar for citizen activists, teachers, NGO representatives, responsible media, elected local government officials, and legal professionals to discuss transparency and accountability. In-country partner (a local university or other appropriate professional group) would co-host the event with the U.S. grantee institution; selection of participants for U.S. program.

• U.S. program that would include a seminar on the role of government/citizen in the U.S.; internships in local elected officials' offices, NGO organizations, and citizen organizations; and a one-day debriefing and evaluation.

• In-country program conducted by U.S. experts that served as internship hosts or seminar leaders. Participants in U.S. program design the seminar and serve as co-presenters. Project would also support materials translated into target language, small grants for projects designed to expand the exchange experience and support for the development of alumni association.

Eligible Countries

Africa (single-country and multiple-country projects accepted)
Angola, Ethiopia, Kenya, Mauritania, Niger, Nigeria, Swaziland
Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov*

East Asia Pacific (single-country projects only)
China, Indonesia, Vietnam
Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov*

Europe and Eurasia (single-country projects only)
Turkey, Ukraine, Kosovo

Europe and Eurasia (multiple-country projects only)
Kyrgyz Republic, Kazakhstan, Tajikistan
Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov*

Near East/North Africa (single-country and multiple-country projects accepted for themes listed above)
Syria, Algeria, Oman, Morocco, Saudi Arabia, Yemen

Near East/North Africa (multiple-country project only for theme listed below)
Egypt, Israel, Jordan, Lebanon, Palestinian Authority Proposals will be only accepted for:

• Engage young political leaders and activists—those active in political parties, university student politics and NGOs—in order to strengthen the participation of youth in the political field.

Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

South Asia (single-country and multiple-country projects accepted)
Bangladesh, India, Nepal, Pakistan, Sri Lanka
Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

II. Developing Professional Standards in Media

• Educate media professionals, both journalists, editors and media managers, in professional standards, including accountability, objective reporting, and investigative journalism in order to ensure widespread, accurate media coverage on one of the following issues: HIV/AIDS, anti-corruption, business development or cultural/ethnic diversity. Projects should also raise media professionals' awareness of the issue. Applicants should propose meetings with advocacy groups and assistance organizations that work to address the target issue.

• Empower professionals to develop internal media that is independent and accountable to the public. Separate programs for broadcast (radio/television) and print media are envisioned.

• Support journalism teachers in designing curricula that promote the development of a responsible and financially sound media.

Audience: Broadcast, print and Web-based journalists and media managers; teachers

Ideal Program Model

• In-country workshop on topics to be determined depending on audience (teachers of journalism, editors, reporters, publishers); selection of participants for U.S. program. In-country workshops should include NGO representatives working on the target issue.

• Four- to five-week U.S. program that includes a week-long academic seminar through a journalism educational institution on the role of the media in the U.S., practices and professional skills development and a three- to four-week internship program in U.S. media outlets that match the size and type of participant's home outlet.

• U.S. media experts travel to country to conduct a follow-on academic seminar for program participants and their colleagues on best practices and lessons learned and to do on-site consultancies in local media outlets.

Eligible Countries

Africa (single-country and multiple-country projects accepted)
Cameroon, Ethiopia, Liberia, Mali, Niger, Nigeria, Tanzania, Uganda
Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov*

East Asia and Pacific (single-country projects only)
Cambodia, China, Indonesia, Republic of Korea, Laos, Malaysia, Philippines, Vietnam
Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov*

Europe and Eurasia (single-country projects only)
Armenia, Belarus, Azerbaijan, Russia, Kyrgyzstan, Kazakhstan
Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov*

Near East/North Africa (single-country and multiple-country projects accepted)
Iraq, the Palestinian Authority, Syria, Libya, Algeria, Tunisia, Saudi

Arabia
Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

South Asia (single-country and multiple-country projects accepted)
Afghanistan, Bangladesh, India, Nepal, Pakistan
Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

Western Hemisphere (single-country and multiple-country projects accepted)
Bolivia, Dominican Republic, Ecuador, Haiti, Nicaragua, Peru, Venezuela
Contact: Laverne Johnson, tel: (202) 453–8160, e-mail: *JohnsonLV@state.gov*

III. Creating Economic Growth to Fight Poverty and Strengthen Democracy

• Engage community and business leaders, including those involved in science and technology, to promote economic growth and prosperity among youth by sharing practical methods and developing leadership skills in business, including the importance of corporate social responsibility.

• Educate youth and women in entrepreneurial thinking and business leadership skills to empower them to engage in business creation.

Audience: Young entrepreneurs, teachers, community leaders, including representatives from governmental and non-governmental organizations

Ideal Program Model

• Successful businessmen conduct workshops for audiences on effective, practical methods of stimulating entrepreneurial skills in target countries.

• Key members of in-country workshops invited to U.S. for business facilitation or mentoring to promote innovation and networking skills. Develop action plans for business implementation upon return home.

• Upon return participants implement business action plans with guidance from U.S. mentors utilizing e-mail and other direct communication.

• Business mentors travel to country to evaluate implementation of action plan and offer assistance.

Eligible Countries

Africa (single-country and multiple-country projects accepted)
Benin, Democratic Republic of Congo, Ethiopia, Ghana, Liberia, Mauritania, Niger, Sierra Leone, Tanzania
Contact: Curtis Huff, tel: (202) 453–8159, e-mail: *HuffCE@State.gov*

East Asia Pacific (multiple-country projects only)
Cambodia, Laos, Vietnam

East Asia Pacific (single-country projects only)
Mongolia
Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov*

Near East/North Africa (single-country projects only)
Algeria, Palestinian Authority, Syria, Yemen
Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

Western Hemisphere (single-country and multiple-country projects accepted)
Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, Haiti, Mexico, Nicaragua, Peru, Venezuela. Particular focus on indigenous and Afro-Latino communities.
Contact: Laverne Johnson, tel: (202) 453–8160, e-mail: *JohnsonLV@state.gov*

South Asia (single-country and multiple-country projects accepted)
Afghanistan, India, Bangladesh, Sri Lanka
Contact: Thomas Johnston, tel: (202) 453–8162, e-mail: *JohnstonTJ@state.gov*

IV. Dialogue on Intellectual Property or Municipal Governance as a Device for Bridging Conflict

• Engage citizens from China and Taiwan in a dialogue on intellectual property or municipal governance in order to foster increased understanding.

Audience: Local government representatives, lawyers, representatives from the NGO sector, community leaders

Ideal Program Model

• In-country program that includes workshops and outreach to wide audience. Recruitment and selection of participants for U.S. program from those that have attended workshops.

• U.S. program that includes site visits, meetings and internships

• In-country program that includes workshops, led by American experts and participants in the U.S. program. The development of handbooks, educational materials and long-term institutional relationships.

Eligible Countries

East Asia and Pacific—China and Taiwan Only
Contact: Clint Wright, tel: (202) 453–8164, e-mail: *WrightHC@state.gov*

V. Integration of Marginalized Populations, Particularly Youth, in Western Europe

• Engage community leaders, educators, youth influencers, journalists, representatives of community organizations and government departments in examination of programs and practices to facilitate integration, assimilation and empowerment of minority populations, particularly youth.

Audience: Community leaders, educators, youth influencers, journalists, NGO and government representatives.

Ideal Program Model

• In-country workshops for 20–40 foreign and U.S. participants to examine the process of integration/assimilation of marginalized populations in Europe and to evaluate the programs, both governmental and non-governmental, to support immigrants.

• U.S. program for 10–15 foreign participants to examine the history of and current U.S. practices of integrating immigrant populations into society. Examine and compare immigrant groups in European and U.S. societies, looking at access to education, employment opportunities, political involvement, community leadership, and government and private sector roles in outreach to marginalized youth.

Eligible Countries

Europe (single-country projects only)
United Kingdom, France, Netherlands, Spain, Belgium, Germany
Contact: Brent Beemer, tel: (202) 453–8147, e-mail: *BeemerBT@state.gov*

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning; extended and intensive workshops; and seminars taking place in the United States or overseas as long as these seminars promote intensive exchange of ideas among participants in the project. Examples of program activities include:

1. A U.S.-based program that includes an orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience with committed people within each

country, and become active in a practical and valuable way.

3. Site visits by U.S. facilitators/experts to monitor projects in the region and to encourage further development, as appropriate.

Participant Selection

Proposals should clearly describe the types of persons that will participate in the program as well as the participant recruitment and selection processes. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Security Considerations

With regard to projects focusing on Afghanistan, Pakistan, and Iraq, applicants should be aware of security concerns that will affect the ability of the grantee organization to arrange for the travel of U.S. citizens to these countries or to conduct site visits, participant interviews, seminars, workshops, or training sessions there. All travel to, and activities conducted in, these countries will be subject to consultation with and approval of official U.S. security personnel in country. The applicant organization should be prepared to modify timing or to reconfigure project implementation plans as required by security considerations.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY–2006.

Approximate Total Funding: Pending availability of funding, $5.8 million.

Approximate Number of Awards: 25–30.

Approximate Average Award: $150,000–$250,000.

Floor of Award Range: $30,000.

Ceiling of Award Range: Approximately $250,000.

Anticipated Award Date: Pending availability of funds, August 31, 2006.

Anticipated Project Completion Date: July 31, 2007–May 31, 2009. Projects under this competition may range in length from one to three years depending on the number of project components, the country/region targeted and the extent of the evaluation plan proposed by the applicant.

The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, item IV.3d.3 below, for further guidance on evaluation.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Cost sharing is an important element of the ECA-grantee institution relationship, and it demonstrates the implementing organization's commitment to the program. Cost sharing is included as one criterion for grant proposal evaluation. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive under the Cost Effectiveness and Cost Sharing criterion (item V.1 below). When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b) Technical Eligibility: In addition to the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instructions document, all proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

1. The Office does not support proposals limited to conferences or seminars (*i.e.*, one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

2. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

3. The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.

4. Applicants may not submit more than four (4) proposals total for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel.

5. Proposals that target countries/regions or themes not listed in the RFGP will be deemed technically ineligible.

6. Proposals involving the production or interpretation of artistic work WILL NOT be accepted under this competition, and if received, will be declared technically ineligible.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC, 20547, tel.: 202–453–8181; fax: 202–453–8168; or e-mail *gustafsondp@state.gov* or *rectorva@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C–06–01) located at the top of this

announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify the Bureau Program Officer listed for each region and theme above and refer to the Funding Opportunity Number (ECA/PE/C–06–01) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet:

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent per the instructions under IV.3f. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa.

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status.

Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR 62 *et seq.*, including the oversight of its Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, Fax: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable,

attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. For this competition, requests should not exceed approximately $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. *Travel.* International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html.* ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

3. *Interpreters.* For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. *Book and Cultural Allowances.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. *Room rental.* The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. *Materials.* Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. *Equipment.* Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. *Working meal.* Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. *Health insurance.* Foreign participants will be covered during their participation in the program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by

the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. *In-country travel costs* for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: Thursday, February 9, 2006.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–06–01 Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its (their) review.

V. Application Review Information

V.1. Review Process. The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards-U.S. Government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. *Proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau will be deemed more*

competitive under this criterion. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI) and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc.) in Tab E. See the ''Program Management/Evaluation'' section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the ''Program Management/Evaluation'' section, item IV.3d.3 above for more guidance.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. Any interim report(s) required in the Bureau grant agreement document.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to Application and Submission Instructions [IV.3d.3] above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: The Office of Citizen Exchanges, ECA/PE/C, Room 220, ECA/PE/C–06–01, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel.: 202–453–8181; fax: 202–453–8168; *gustafsondp@state.gov* or *rectorva@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–06–01.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program

and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: November 29, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7073 Filed 12–7–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5240]

Notice Convening an Accountability Review Board to Examine the Circumstances of the Death of DS Special Agent Stephen Sullivan and Seven Security Contractors in September 2005

Pursuant to section 301 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (22 U.S.C. 4831 *et seq.*), the Secretary of State has determined that recent attacks on two official motorcades in Iraq involved loss of life that was at or related to a U.S. mission abroad. Therefore, the Secretary has convened an Accountability Review Board to examine the facts and the circumstances of the attacks and to report to me such findings and recommendations as it deems appropriate, in keeping with the enclosed mandate. In these two attacks, Diplomatic Security Special Agent Stephen Sullivan was killed along with seven security contractors.

The Secretary has appointed Edward G. Lanpher, a retired U.S. Ambassador, as Chair of the Board. He will be assisted by M. Bart Flaherty, Frederick Mecke, Mike Absher, Laurie Tracy and Executive Secretary to the Board, Robert A. Bradtke. They bring to their deliberations distinguished backgrounds in government service and/or in the private sector.

The Board will submit its conclusions and recommendations to Secretary Rice within 60 days of its first meeting, unless the Chair determines a need for additional time. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information relevant to the Board's examination of these incidents should contact the Board promptly at (202) 647–5204 or send a fax to the Board at (202) 647–3282.

This notice shall be published in the **Federal Register**.

Dated: December 1, 2005.

Henrietta H. Fore,

Under Secretary for Management, Department of State.

[FR Doc. E5–7075 Filed 12–7–05; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice 5241]

Bureau of Western Hemisphere Affairs; Notice of Receipt of Application for a Presidential Permit to Construct a New Commercial Border Crossing at San Luis, Arizona

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has received an application for a Presidential Permit authorizing the construction, operation and maintenance of a new commercial border crossing at San Luis, Arizona, known hereafter as the ''San Luis II'' crossing. This application has been filed by the Greater Yuma (Arizona) Port Authority. The construction project, which would be carried out in partnership with a number of local, state, federal and bi-national entities, is designed to alleviate pressure on the current Port of Entry at San Luis, Arizona (designated as San Luis I) by allowing for the separation of commercial traffic from non-commercial/privately operated vehicles. The Department of State's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended by Executive Order 12847, dated May 17, 1993, Executive Order 13284, dated January 23, 2003 and Executive Order 13337, dated April 30, 2004. As provided in E.O. 11423, the Department is circulating this application to concerned agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this application on or before January 13, 2006 to John A. Ritchie, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: John A. Ritchie, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520. Telephone: (202) 647–8529, fax: (202) 647–5752.

SUPPLEMENTARY INFORMATION: The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours throughout the comment period. Any questions related to this notice may be addressed to Mr. Ritchie using the contact information above.

Dated: December 2, 2005.

Roberta S. Jacobson,

Director, Office of Mexican Affairs, Department of State.

[FR Doc. E5–7074 Filed 12–7–05; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Free Trade Agreements; Invitation for Applications for Inclusion on U.S.-Chile FTA Dispute Settlement Rosters

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for Applications.

SUMMARY: The United States-Chile Free Trade Agreement (Chile FTA) requires the establishment of four rosters of individuals that would be available to serve as panelists in dispute settlement proceedings under the Agreement. A general roster is required to be established under Chapter Twenty-Two: Dispute Settlement. Chapter Twelve on Financial Services, Chapter Eighteen on Labor, and Chapter Nineteen on Environment require the establishment of specific rosters requiring financial services, labor, and environment expertise, respectively.

DATES: Applications should be received no later than December 30, 2005.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0602@ustr.eop.gov,* Attn: ''U.S.-Chile FTA Panelist Applications'' in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: For information regarding the form of the application, contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, at (202) 395–3582. For other inquiries, contact María L. Pagán, Associate General Counsel, at (202) 395–7305.

SUPPLEMENTARY INFORMATION:

Dispute Settlement Mechanism of U.S.-Chile Free Trade Agreement

The Chile FTA sets out detailed procedures for the resolution of disputes over compliance with the obligations set out in the agreement. Dispute settlement involves three stages: (1) Lower level consultations between the Parties to try to arrive at a mutually satisfactory

resolution of the matter; (2) cabinet-level consultations; and, (3) resort to a neutral panel to make a determination as to whether a Party is in compliance with its obligations under the agreement. The panel is composed of three individuals chosen by the Parties.

The Chile FTA requires the establishment of a general dispute settlement roster from which panelists shall normally be selected. The roster must be comprised of at least 20 individuals, at least six of whom should be non-nationals of either Party. Once established, the roster remains in effect for a minimum of three years. See Chile FTA, Article 22.7. The Chile FTA also requires the establishment of three additional rosters, one each for disputes under the Financial Services Chapter (Chapter Twelve), the Labor Chapter (Chapter Eighteen), and the Environment Chapter (Chapter Nineteen). The financial services roster must be comprised of up to 10 individuals, up to four of whom must be non-nationals of either Party. See Chile FTA, Article 12.17. The labor roster must be comprised of up to 12 individuals, four of whom must be non-nationals of either Party. See Chile FTA, Article 18.7. The environment roster must be comprised of at least 12 individuals, four of whom must be non-nationals of either Party. See Chile FTA, Article 19.7.

Upon each request for establishment of a panel, potential panelists will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the potential panelist and, if applicable, clients of the potential panelist's firm.

The text of the Chile FTA can be found through the Office of the U.S. Trade Representative Web site (*www.ustr.gov/Trade_ Agreements/ Section_Index.html*).

Criteria for Eligibility for Qualification as Panelist

To qualify as a panelist for the general roster an individual must: (1) Have expertise or experience in law, international trade, other matters covered by the Agreement, or the resolution of disputes arising under international trade agreements; (2) be objective, reliable, and possess sound judgment; (3) be independent of, and not be affiliated with or take instructions from any Party; and (4) comply with a code of conduct. The United States seeks at least 10 individuals, at least three of whom must be non-nationals of the United States or Chile.

To qualify as a panelist for the financial services roster an individual must have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, and meet the qualifications set out in (2) through (4) above. The United States seeks at least five individuals, up to two of whom should be non-nationals of the United States or Chile.

To qualify as a panelist for the labor roster an individual must have expertise or experience in labor law or its enforcement, or in the resolution of disputes arising under international agreements, and meet the qualifications set out in (2) through (4) above. The United States seeks six individuals, two of whom must be non-nationals of the United States or Chile.

To qualify as a panelist for the environment roster an individual must have expertise or experience in environmental law or its enforcement, international trade, or the resolution of disputes arising under international trade agreements, and meet the qualifications set out in (2) through (4) above. The United States seeks at least six individuals, at least two of whom must be non-nationals of the United States or Chile.

Procedures for Selection of Roster Members

An interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the various rosters and lists. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the rosters and lists.

Applications

Eligible individuals who wish to be considered for the Chile FTA rosters are invited to submit applications. Persons submitting applications may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to FR0602@ustr.eop.gov, with ''Chile FTA Panelist Application'' in the subject line. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic 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.

Applications must be typewritten, and should be headed ''Application for Consideration as a Chile FTA Panelist.'' Applicants must specify for which of the four rosters they wish to be considered: General, Financial Services, Labor, or Environment. Applicants may specify more than one roster. Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning the relevant area of expertise. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. A list of international trade proceedings or domestic proceedings relating to international trade matters in which the applicant has provided advice to a party or otherwise participated.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States or for the Government of Chile.
12. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
13. A short statement of qualifications and availability for service on the FTA dispute settlement panels, including information relevant to the applicant's familiarity with international trade law and relevant area(s) for the roster(s) for which the applicant seeks to be considered, and willingness and ability to make time commitments necessary for service on panels.

14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with the relevant area of expertise.

Public Disclosure

Applications normally will not be subject to public disclosure. Applications may be shared with other agencies, the Ways and Means Committee of the House of Representatives, the Finance Committee of the Senate, and the Government of Chile for their consideration in determining whether to appoint persons to the rosters.

False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the roster or appointment to a panel are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (''PRA'') that has been approved by the Office of Management and Budget (''OMB''). 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 PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for consideration as a possible Chile FTA panelist. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or recordkeeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0013. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate to be a Chile FTA panelist. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with dispute settlement under the Chile FTA, and officials of the Government of Chile to select well-qualified individuals to serve as panelists.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E5–7028 Filed 12–7–05; 8:45 am]

BILLING CODE 3190–W6–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 25, 2005

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–23125.

Date Filed: November 22, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC23/TC123 Passenger Tariff Coordinating Conference (SP–4120), Geneva, September 5–9, 2005.

TC23/123 Europe-Japan/Korea Resolutions (Memo 0131).

TC23/TC123 Passenger Tariff Coordinating Conference (SP–4185), Geneva, September 5–9, 2005.

TC23/123 Europe-Japan/Korea Resolutions (Memo 0134).

Minutes: TC23/TC123 Passenger Tariff Coordinating Conference, Geneva, September 5–9, 2005. (Memo 0136).

Tables: TC23/TC123 Passenger Tariff Coordinating Conference (SP–4185), Geneva, 5–9 September 2005 Specified Fares Tables. (Memo 0069 and Memo 0071).

Technical Correction: TC23/TC123 Passenger Tariff Coordinating Conference (SP–4185). Geneva, September 5–9, 2005 Specified Fares Tables (Memo 072).

Intended effective date: April 1, 2006.

Docket Number: OST–2005–23126.

Date Filed: November 22, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC3 Mail Vote 468. Special Passenger Amending Resolution 010b, from Singapore to Brunei, Macao SAR, Philippines.

Intended effective date: December 1, 2005.

Docket Number: OST–2005–23139.

Date Filed: November 22, 2005.

Parties: Members of the International Air Transport Association.

Subject: TC123 Passenger Tariff Coordinating Conferences, Bangkok, October 24–November 1, 2005.

TC123 South Atlantic Resolution 002ce (Memo 0318).

Technical Correction: TC123 Passenger Tariff Coordination Conferences, Bangkok, October 24–November 1 2005.

TC123 South Atlantic Resolution 002ce (Memo 0320).

Intended effective date: December 15, 2005.

Docket Number: OST–2005–23140.

Date Filed: November 22, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC23 Mail Vote 467. Special Passenger Amending Resolution 010a, from Korea (Rep. of) to Middle East.

Intended effective date: December 1, 2005.

Docket Number: OST–2005–23146.

Date Filed: November 23, 2005.

Parties: Members of the International Air Transport Association.

Subject: PAC/1/2/3 dated October 28, 2005. Mail Vote Number A 124. Amended Procedure for Updates to the BSP Manual for Agents.

PAC 3 dated October 28, 2005. Mail Vote Number A 125. Implementation of Resolution 810 in Sri Lanka.

Intended effective date: January 1, 2006.

Docket Number: OST–2005–23154.

Date Filed: November 25, 2005.

Parties: Members of the International Air Transport Association.

Subject: PTC3 Mail Vote 469. Special Passenger Amending Resolution 010c, from Korea (Rep. of) to Japan (Memo 0902).

Intended effective date: December 5, 2005.

Renee V. Wright,

Program Manager, Docket Operations, **Federal Register** *Liaison.*

[FR Doc. E5–7066 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2005–10039]

Standardization and Clarification of Application of 14 CFR Part 23, Sections 23.1301 and 23.1309, Regarding Environmental Qualification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy that clarifies and standardizes the application of the subject sections on environmental qualification. This notice advises the public, especially manufacturers of normal, utility, and acrobatic category airplanes, and commuter category airplanes and their suppliers, that the FAA intends to adopt this policy. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Comments must be received on or before January 9, 2006.

ADDRESSES: Send all comments on the proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT**. Comments may be inspected at the Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: 816–329–4090; e-mail: *erv.dvorak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this proposed policy statement by submitting written data, views, or arguments. Identify the proposed policy statement number, PS–ACE100–2005–10039, on your comments. If you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in the policy because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed policy statement PS–ACE100–2005–10039'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in Microsoft Word for Windows. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Copies of the proposed policy statement, PS–ACE100–2005–10039, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. In a few days, the proposed policy statement will also be available on the Internet at the following address: *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri on November 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–7022 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–18474]

Pearl Crossing LNG Terminal LLC, Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the cancellation of all actions related to the processing of a license application for the proposed Pearl Crossing LNG Terminal LLC deepwater port. The action announced here includes cancellation of all activities related to the preparation of an Environmental Impact Statement (EIS) that was announced on Monday, August 16, 2004, in **Federal Register** Volume 69 Number 157 (Notice of Intent to prepare an Environmental Impact Statement). The action is taken in response to the applicant's decision to withdraw the application.

DATES: The cancellation of all actions related to this license application was effective October 19, 2005.

ADDRESSES: The Docket Management Facility maintains the public docket for this project. The docket may be viewed electronically at *http://dms.dot.gov* under docket number USCG–2004–18474, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: If you have questions about the Pearl Crossing LLC Deepwater Port project, contact LCDR Derek Dostie, Deepwater Ports Standards Division, USCG at (202) 267–0662 or *ddostie@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: On October 19, 2005, the Coast Guard and MARAD received notification from the applicant, Pearl Crossing LNG Terminal LLC, that it withdrew its application for a liquefied natural gas deepwater port with associated pipeline facilities 41 miles off the coast of Louisiana in lease block West Cameron number 220. Consequently, the Coast Guard and MARAD are terminating all activities relating to the application. Further information pertaining to this application may be found in the public docket (*see* **ADDRESSES**).

Dated: November 17, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation, Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. E5–7029 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. Ronald Strickland to NHTSA's Office of Defects Investigation

(ODI), received on June 24, 2005, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the performance of the ignition coil plugs on model year (MY) 2000–2003 Volkswagen (VW) Jetta, Golf and Passat sedans with 4, 6, or 8 cylinder engines. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP05–004.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Magno, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: By letter received on June 24, 2005, Mr. Ronald M. Strickland of Raleigh, NC, submitted a petition requesting that the agency investigate the performance of the ignition coils on model year (MY) 2000–2003 Volkswagen Jetta, Golf and Passat sedans.

The petitioner alleges that he had experienced multiple stalling events as a result of one or more ignition coils malfunctioning on his 2002 VW Jetta. As a result of the engine stalling, the petitioner reported a loss of power steering and the need for increased braking effort when he pulled the vehicle over to the side of the road. After a few minutes parked on the shoulder, he was able to restart and drive the vehicle, although the engine operated at reduced power.

VW issued a Customer Satisfaction Campaign (CSC) on January 31, 2003, instructing their dealerships to inspect 2001–2002 VW vehicles for malfunctioning ignition coils. Pre-campaign letters were sent to owners in February 2003. Any such coils were to be replaced at no cost to the vehicle owner. In May 2003, VW issued a dealer circular, which addressed their need to notify consumers as replacement ignition coils became available. Consumers were notified to bring their vehicles to their dealerships via owner letters mailed out on June 6, 2003. In September 2003, additional notification targeting 2002–2003 VW Golf GTI and Jetta 6-cylinder models was mailed to those owners. In November 2003, reminder notifications were mailed to owners who have not had the campaign repairs done.

Initially, VW instructed the dealerships to replace only the malfunctioning ignition coil. However, revised CSCs were issued to dealerships in December 2003 and January 2004, instructing dealerships to replace all ignition coils regardless of their performance and to include wiring harness modifications needed to perform the campaign on specific MY 2002–2003 Jetta vehicles.

To date, ODI has received a total of 516 consumer complaints (including one from the petitioner) about the ignition coil performance in MY 2000 to 2003 VW vehicles. ODI analyzed the material and identified 133 complaints (25.7% of the total) that experienced the same stall event as the petitioner. The remaining reports voiced concerns regarding the engine drivability issues (*i.e.*, reduced engine power, hesitation and surging), none of which involved a crash, injury, or fatality.

Three of the complainants indicated to ODI that their malfunctioning ignition coils overheated but caused no additional vehicle damage. A fourth consumer reported an engine fire from a failed coil and was able to extinguish the flames, which were localized to the top of the engine intake manifold without further incident.

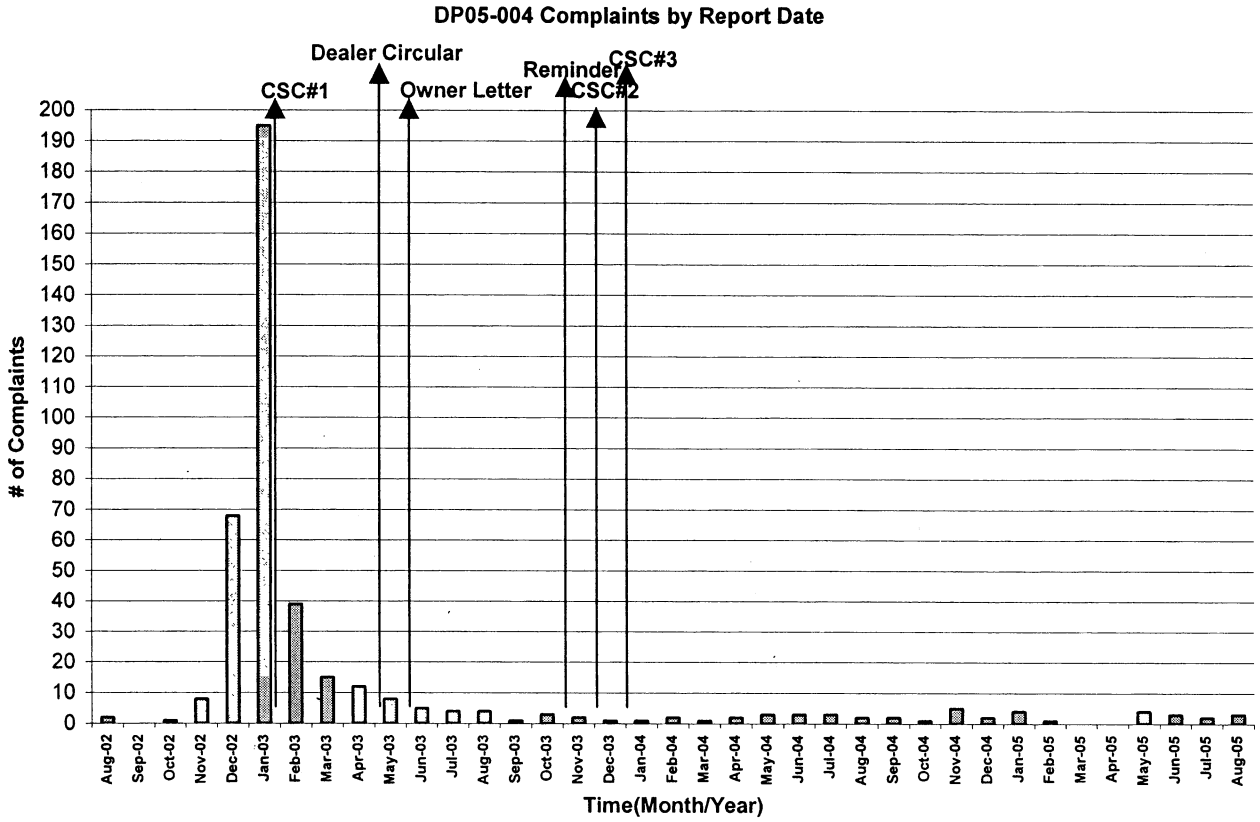

Figure 1: Complaints by Report Date

Within the last 12 months ODI has received only 17 complaints regarding either stalling or drivability issues with these ignition coils. Within the last two years ODI has received only 38 complaints. After the first CSC was sent to dealerships on January 31, 2003, by VW, the number of complaints regarding this issue has rapidly declined. (Figure 1)

Although the concerns of the petitioner could theoretically lead to a safety problem, two years of real-world data shows very little risk due to the fact that in the majority of events the engine continues to operate at a reduced power level. The absence of reported real-world crash experience is consistent with the minimal consequence on the vehicle control systems associated with ignition coil failure. This is largely due to the fact that the failure happens on an individual coil and there is no trend of multiple and simultaneous coil failures that would tend to drive up the rate of reported stalling events. Should the vehicle stall, the power brake system will maintain a reserve of two or more brake pedal applications before reverting to a manual braking application mode. Any loss of power steering assist will increase steering effort at low speeds but at highway speeds the increase in steering effort will be minimal to none. Once the vehicle operator becomes aware of the problem (by experiencing a loss of power due to one of the ignition coils malfunctioning), he or she is able to take precautionary and compensatory measures and still maintain control of the vehicle.

In sum, VW's service campaign seems to be effectively alleviating the problem the petitioner has raised; the frequency of the alleged defect has declined considerably; and the alleged defect does not, based on current evidence, seem likely to lead to a significant safety problem. In view of the foregoing, it is unlikely that the NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize the NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 2, 2005.

Daniel Smith,

Associate Administrator for Enforcement.

[FR Doc. 05–23765 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18478; Notice 2]

Decision That Nonconforming 1999 Ferrari 456GT and GTA Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of decision by National Highway Traffic Safety Administration that nonconforming 1999 Ferrari 456GT and GTA passenger cars are eligible for importation.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration (NHTSA) that certain 1999 Ferrari 456GT and GTA passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1999 Ferrari 456GT and GTA passenger cars), and they are capable of being readily altered to conform to the standards.

DATES: This decision was effective September 24, 2004.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC (JK) of Baltimore, Maryland (Registered Importer 90–006), petitioned NHTSA to decide whether 1999 Ferrari 456GT and GTA passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 9, 2004 (69 FR 41570) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of petition, from Ferrari North America, Inc. (FNA), the U.S. representative of Ferrari SpA, the vehicle's manufacturer. In its comment, FNA contended that there are complex issues concerning the conformance of Ferrari GT and GTA passenger cars to FMVSS Nos. 214 Side Impact Protection and 216 Roof Crush Resistance. FNA supported this contention by noting that such issues had come to the fore in the import eligibility decision covering 1997 and 1998 Ferrari 456 GT and GTA passenger cars that was published on April 16, 2004 (at 69 FR 20663). As a consequence, FNA expressed concern that the petitioner in this instance had not fully documented its conclusions with regard to both the need for modifications to meet those two standards and the methods by which such modifications would be made if they are deemed to be necessary. FNA further noted that although the petition had referred to FMVSS No. 216, no mention of this standard was made in the notice of petition published by the agency. Lastly, FNA observed that the petitioner did not supply the vehicle identification number (VIN) of the vehicle on which the petition was based, despite agency instructions for petitioning RIs to furnish this information.

The agency referred FNA's comments to the petitioner, but received no response. The agency notes that other than observing that there are complex issues concerning the conformance of the vehicles with FMVSS Nos. 214 and 216, FNA provided no specifics to support this position. More significantly, FNA did not contend that the vehicles are incapable of being readily altered to comply with those standards. As noted by FNA, the agency has already concluded that 1997 and 1998 Ferrari GT and GTA passenger cars are capable of being readily altered to

comply with FMVSS Nos. 214 and 216. Based on the similarity of the 1997 and 1998 models to the 1999 model year vehicles that are the subject of this petition, the agency has no reason to conclude that the 1999 models are not similarly capable of being readily altered to comply. FNA was correct in observing that the agency, through oversight, had neglected to include in the notice of petition any discussion regarding the vehicles' compliance with FMVSS No. 216. The notice should have stated that the petition identified the installation of braces bonded at the rear roof corners as needed to conform the vehicles to that standard. With regard to the petitioner's failure to provide a VIN for the petitioned vehicle, the agency notes that although it would prefer petitioners to supply information of this kind, there is no regulatory requirement for them to do so.

Based on these considerations, the agency decided to grant the petition.

As NHTSA concluded in its analysis of the eligibility of the similar 1997 and 1998 Ferrari GT and GTA passenger cars, the modifications proposed for the 1999 Ferrari GT and GTA passenger cars indicate that the vehicles are capable of being readily altered.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–445 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA decided that 1999 Ferrari 456GT and GTA passenger cars that were not originally manufactured to comply with all applicable FMVSS are substantially similar to 1999 Ferrari 456GT and GTA passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E5–7021 Filed 12–7–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 1, 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 January 9, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0013.
Type of Review: Extension.
Title: Notice Concerning Fiduciary Relationship.
Form: IRS form 56.
Description: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the persons for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Business or other for-profit, Individuals or households.
Estimated Total Burden Hours: 292,800 hours.

OMB Number: 1545–0430.
Type of Review: Extension.
Title: Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Form: IRS form 4810.
Description: Form 4810 is used to request a prompt assessment under IRC Section 6501(d). IRS uses this form to locate the return to expedite processing of the taxpayer's request.
Respondents: Business or other for-profit, Individual or households, Farms and Federal Government.
Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1545–0666.
Type of Review: Extension.
Title: Statement for Claiming Benefits Provided by Section 911 of the Internal Revenue Code.
Form: IRS form 673.
Description: Form 673 is completed by a citizen of the United States and is furnished to his or her employer in order to exclude from income tax withholding all or part of the wages paid the citizen for services performed outside the United States.
Respondents: Individual or households.
Estimated Total Burden Hours: 71,000 hours.

OMB Number: 1545–1221.
Type of Review: Extension.
Title: EE–147–87 (final) Qualified Separate Lines of Business.
Description: The affected public includes employers who maintain qualified employee retirement plans. Where applicable, the employer must furnish notice to the IRS that the employer treats itself as operating qualified separate lines of business and some may request an IRS determination that such lines satisfy administrative security.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 899 hours.

OMB Number: 1545–1511.
Type of Review: Extension.
Title: REG–209828–96 (Final) Nuclear Decommissioning Funds; Revised Schedules of Ruling Amounts.
Description: The regulations revise the requirements for requesting a schedule or ruling amounts based on a formula or method.
Respondents: Business or other for-profit.
Estimated Total Burden Hours: 100 hours.

OMB Number: 1545–1933.
Type of Review: Extension.
Title: Revenue Procedure 2005–28, Granting Automatic Consent to Change to the Alternative Tax Book Value Method of Valuing Assets for Expense Apportionment Purpose.
Form: IRS forms 1116 and 1118.
Description: This revenue procedure provides the administrative procedure under which an eligible taxpayer may obtain automatic consent to change from the fair market value method to the alternative tax book value method to the alternative tax book value method of valuing assets for purpose of apportioning expenses under section 1.861–9T(g) of the Temporary Income Tax Regulations. The procedure applies to changes in apportionment method requested for taxable years beginning between March 26, 2004 and March 25, 2006. The reporting and recordkeeping requirements imposed by the revenue procedure will enable the IRS to identify eligibility to use the procedure and the years for which the alternative tax book value method is being adopted. Likely respondents are corporations.

Respondents: Business or other for-profit, Individual or households.

Estimated Total Burden Hours: 100 hours.

OMB Number: 1545–1960.

Type of Review: Extension.

Title: Information Referral.

Form: IRS form 3949–A.

Description: This application is voluntary and the information requested helps us determine if there has been a violation of income Tax Law. We need the taxpayer identification number-Social Security Number (SSN) or Employer Identification Number (EIN) in order to fully process your application. Failure to provide this information may lead to suspension of processing this application.

Respondents: Individual or households.

Estimated Total Burden Hours: 53,750 hours.

OMB Number: 1545–1962.

Type of Review: Extension.

Title: Notice of Income Donated Intellectual Property.

Form: IRS form 8899.

Description: This form is filed by charitable org. receiving donations of intellectual property if the donor provides a timely notice. The initial deduction is limited to the donor's basis; additional deductions are allowed to the extent of income from the property, reducing excessive deductions.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Total Burden Hours: 5,430 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. E5–7012 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

AGENCY: Office of Terrorist Financing and Financial Crime, Treasury.

ACTION: Notice with request for comments.

SUMMARY: The U.S. Department of the Treasury (''Treasury'') is publishing for public comment a revised version of its *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (''Guidelines''), which were originally released in November 2002. Although Treasury is soliciting public comment on these Guidelines, they immediately replace the 2002 Guidelines. Treasury will consider all comments received on or before February 1, 2006, in finalizing the revised version of the Guidelines for republication in the **Federal Register** and on Treasury's Web site.

DATES: Written comments must be received on or before February 1, 2006.

ADDRESSES: Comments may be submitted by mail, by facsimile, or through the Treasury's Web site:

Mailing address: Office of Terrorist Financing and Financial Crime, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Facsimile number: (202) 622–9747.

Web site: *http://www.treas.gov/offices/enforcement/key-issues/protecting/charities-intro.shtml.*

FOR FURTHER INFORMATION CONTACT: Office of Terrorist Financing and Financial Crime: (202) 622–3786.

SUPPLEMENTARY INFORMATION: The revised Guidelines and additional information concerning the protection of charities are available on the Treasury Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.*

The text of the revised Guidelines is printed below.

Dated: November 29, 2005.

Patrick M. O'Brien,

Assistant Secretary of the Treasury.

U.S. Department of the Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities [1]

I. Introduction

Upon issuance of Executive Order 13224, President George W. Bush directed the U.S. Department of the Treasury (''Treasury'') to work with other elements of the Federal government and the international community to develop a comprehensive and sustained campaign against the sources and conduits of terrorist financing. Investigations have revealed terrorist abuse of charitable organizations, both in the United States and worldwide, often through the diversion of donations intended for humanitarian purposes but funneled instead to terrorists, their support networks, and their operations. This abuse threatens to undermine donor confidence and jeopardizes the integrity of the charitable sector, whose services are indispensable to both national and world communities.

In response to this threat, Treasury first released the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* (''Guidelines'') in November 2002. In November 2005, Treasury revised these Guidelines, based on extensive review and comment by public and private sector interested parties, to improve the utility of the Guidelines in protecting the sector from abuse by terrorists and their support networks. The Guidelines further enhance awareness in the donor and charitable communities of the kinds of practices that charities may adopt to reduce the risk of terrorist financing. These Guidelines, as presented by Treasury, are voluntary and do not supersede or modify current or future legal requirements applicable to all U.S. persons, including non-profit institutions. Rather, the Guidelines are intended to assist charities in developing a risk-based approach to guard against the threat of diversion of charitable funds for use by terrorists and their support networks. Given the risk-based nature of these Guidelines, we recognize that certain aspects will not be applicable to every charity, charitable activity, or circumstance. Moreover, we acknowledge that certain exigent circumstances (such as catastrophic disasters) may make application of the Guidelines difficult. In such cases, charities should maintain a risk-based approach that includes all prudent and reasonable measures that are feasible under the circumstances. Charities and donors are encouraged to consult these Guidelines when considering protective measures to prevent infiltration or abuse by terrorists.[2]

[1] This document is an amended version of the *Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities* released by the U.S. Department of the Treasury in November 2002.

[2] These guidelines are designed to assist charities that attempt in good faith to protect themselves from terrorist abuse and are not intended to address the problem of organizations that use the cover of charitable work, whether real or perceived, to provide support to terrorist groups or fronts operating on behalf of terrorist groups. Adherence to these Guidelines does not excuse any person (individual or entity) from compliance with any local, state, or federal law or regulation, nor does it release any person from or constitute a legal defense against any civil or criminal liability for violating any such law or regulation. In particular, adherence to these Guidelines shall not be construed to preclude any criminal charge, civil fine, or other action by Treasury or the Department of Justice against persons who engage in prohibited transactions with persons designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, as amended, or with those that are

Continued

Treasury recognizes the vital importance of the charitable community in providing essential services around the world. Treasury also understands the difficulty of providing assistance to those in need, often in remote and inaccessible regions, and applauds the efforts of the charitable community to meet such needs. The goal of these Guidelines is to protect the integrity of the charitable sector by offering the sector ways to minimize the threat of well-intentioned donations not reaching their intended beneficiaries and to combat the abuse of charities by terrorists and their support networks.

II. Fundamental Principles of Good Charitable Practice

A. Charitable organizations must comply with the laws of the United States.

B. Charitable organizations are encouraged to adopt practices in addition to those required by law that provide additional assurances that all assets [3] are used exclusively for charitable or other legitimate purposes.[4]

C. Individuals acting in a fiduciary capacity for any charitable organization should exercise due care in the performance of their responsibilities, consistent with applicable common law as well as local, state, and Federal statutes and regulations.

D. Fiscal responsibility is an essential component of charitable work and must be reflected at every level of a charitable organization.

III. Governance

A. Governing Instruments: Charitable organizations should operate in accordance with governing instruments, *e.g.*, charter, articles of incorporation, bylaws, *etc.* The governing instruments should:

1. Delineate the charity's basic goal(s) and purpose(s);

2. define the structure of the charity, including the composition of the board, how the board is selected and replaced, and the authority and responsibilities of the board;

3. set forth requirements concerning financial reporting, accountability, and practices for solicitation and distribution of funds; and

4. state that the charity shall comply with all applicable local, state, and Federal laws and regulations.

B. Board of Directors: Charitable organizations should be governed by a board of directors (''board'') consisting of at least three (3) members.

1. The board should be an active governing body.

2. The board of each individual charitable organization is responsible for that organization's compliance with relevant laws, and it should adopt and implement practices consistent with the principles contained herein. The board of each charitable organization should oversee implementation of the governance practices to be followed by that organization in a manner consistent with this Section III.

3. The board should be an independent governing body, exercising effective and independent oversight of the charity's operations. The charity should establish a conflict of interest policy for board members and employees. That policy should establish procedures to be followed if a board member or employee has a conflict of interest or a perceived conflict of interest.

4. The board should maintain records of all decisions made. When appropriate, these records should immediately be made available for inspection by the appropriate regulatory/supervisory and law enforcement authorities.

IV. Financial Practice/Accountability

A. The charity should have a budget, adopted in advance on an annual basis and approved and overseen by the board.

B. The board should appoint one individual to serve as the financial/accounting officer who should be responsible for day-to-day control over the charity's assets.

C. If the charity's total annual gross income exceeds $250,000, the board should select an independent certified public accounting firm to audit the finances of the charity and to issue a yearly audited financial statement. The yearly audited financial statement should be available for public inspection.

D. Receipt and Disbursement of Funds.

1. The charity should account for all funds received and disbursed in accordance with generally accepted accounting principles and the requirements of the Internal Revenue Code. The charity should maintain records of the salaries it pays and the expenses it incurs (domestically and internationally).

2. The charity should include in its accounting of all charitable disbursements the name of each recipient, the amount disbursed, and the date of the disbursement.

3. The charity, after recording, should promptly deposit all received funds into an account maintained by the charity at a financial institution. In particular, all currency donated should be promptly deposited into the charity's financial institution account.

4. The charity should make disbursements by check or wire transfer rather than in currency whenever such financial arrangements are reasonably available. Where normal financial services do not exist or other exigencies require making disbursements in currency (as in the case of humanitarian assistance provided in rural areas of many developing countries), the charity should disburse the currency in smaller increments sufficient to meet immediate and short-term needs rather than in large sums intended to cover needs over an extended time frame, and it should exercise oversight regarding the use of the currency for the intended charitable purposes, including keeping detailed internal records of such currency disbursements.

V. Disclosure/Transparency in Governance and Finances

A. Board of Directors/Trustees.

1. Charities should maintain and make publicly available a current list of their board members or trustees and the salaries they are paid.

2. While fully respecting individual privacy rights, charities should maintain records containing additional identifying information about their board members, such as home address, social security number, citizenship, *etc.*

3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the board members of any subsidiaries or affiliates receiving funds from them.

B. Key Employees.[5]

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designated under the criteria defining prohibited persons in the relevant Executive orders issued pursuant to statute, such as the International Emergency Economic Powers Act, as amended. Please see Footnote 9 for an explanation of the master list of Specially Designated Nationals (the ''SDN List''), which includes all such designated persons. These Guidelines are also separate and apart from requirements that apply to charitable organizations under the Internal Revenue Code (''IRC'').

[3] An asset is any item of value, including, but not limited to, services, resources, business, equitable holdings, real estate, stocks, bonds, mutual funds, currency, certificates of deposit, bank accounts, trust funds, and the property and investments placed therein.

[4] A charitable organization may never use charitable assets for illegal purposes; however, a charitable organization may accrue unrelated business taxable income in the course of legitimately doing business as a charitable organization. Even though an organization is recognized as tax exempt, it still may be liable for tax on its unrelated business taxable income.

[5] Key employees include not only highly compensated employees but employees that exercise substantial influence over the day-to-day operations of the charity.

1. Charities should maintain and make publicly available a current list of their five highest paid or most influential employees (the key employees) and the salaries and/or direct or indirect benefits they receive.

2. While fully respecting individual privacy rights, charities should maintain records containing identifying information (such as home address, social security or other taxpayer identification number, citizenship, *etc.*) about their key, non-U.S. employees working abroad. Such information should be similar to that maintained by charities in the normal course of operations about all U.S. employees, wherever employed, and foreign employees working in the United States.

3. While fully respecting individual privacy rights, charities should maintain records containing identifying information for the key employees of any subsidiaries or affiliates receiving funds from them.

C. Mechanisms for Public Disclosure of Distribution of Resources and Services.

1. The charity should maintain and make publicly available a current list of any branches, subsidiaries, and/or affiliates that receive resources and services from the charity.

2. The charity should make publicly available or provide to any member of the general public, upon request, an annual report. The annual report should describe the charity's purpose(s), programs, activities, tax exempt status, the structure and responsibility of the governing body of the charity, and financial information.

3. The charity should make publicly available or provide to any member of the general public, upon request, complete annual financial statements, including a summary of the results of the charity's most recent audit. The financial statements should present the overall financial condition of the charity and its financial activities in accordance with generally accepted accounting principles and reporting practices.

D. Supplying Resources.

When supplying charitable *resources* (monetary and in-kind contributions), fiscal responsibility on the part of a charity should include:

1. The determination that the potential recipient of monetary or in-kind contributions has the ability to both accomplish the charitable purpose of the grant and protect the resources from diversion to non-charitable purposes, including any activity that supports terrorism;

2. The reduction of the terms of the grant to a written agreement signed by both the charity and the recipient;

3. Ongoing monitoring of the recipient and the activities funded under the grant for the term of the grant; and

4. The correction of any misuse of resources by the recipient and the termination of the relationship should misuse continue.

E. Supplying Services.

When supplying charitable *services,* fiscal responsibility on the part of a charity should include:

1. Appropriate measures to reduce the risk that its assets would be used for non-charitable purposes, including any activity that supports terrorism; and

2. Sufficient auditing or accounting controls to trace services or commodities between delivery by the charity and/or service provider and use by the recipient.

F. Solicitations for Funds.

1. The charity should clearly state its goals for and purposes of soliciting funds so that anyone examining its disbursement of funds can determine whether the charity is adhering to those goals.

2. Solicitations for donations should accurately and transparently tell donors how and where their donations are going to be expended.

3. The charity should substantiate on request that solicitations and informational materials, distributed by any means, are accurate, truthful, and not misleading, in whole or in part.

4. The charity should fully, immediately, and publicly disclose whenever it makes a determination that circumstances justify applying funds for a charitable purpose different from the purpose for which they were contributed.

VI. Anti-Terrorist Financing Best Practices

Charities should consider taking the following steps before distributing any charitable funds (and in-kind contributions). As explained in Section I, when taking these steps, charities should apply a risk-based approach, particularly with respect to foreign recipients due to the increased risks associated with overseas charitable activity.

A. The charity should collect the following basic information about recipients:

1. The recipient's name in English, in the language of origin, and any acronym or other names used to identify the recipient; [6]

2. The jurisdictions in which a recipient maintains a physical presence;

3. Any reasonably available historical information about the recipient that assures the charity of the recipient's identity and integrity, including: (i) The jurisdiction in which a recipient organization is incorporated or formed; (ii) copies of incorporating or other governing instruments; (iii) information on the individuals who formed the organization; and (iv) information relating to the recipient's operating history;

4. The address and phone number of each place of business of a recipient;

5. A statement of the principal purpose of the recipient, including a detailed report of the recipient's projects and goals;

6. The names and addresses of individuals, entities, or organizations to which the recipient currently provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable;

7. The names and addresses of any subcontracting organizations utilized by the recipient;

8. Copies of any public filings or releases made by the recipient, including the most recent official registry documents, annual reports, and annual filings with the pertinent government, as applicable; and

9. The recipient's sources of income, such as official grants, private endowments, and commercial activities.

B. The charity should conduct basic vetting of recipients as follows:

1. The charity should conduct a reasonable search of public information, including information available via the Internet, to determine whether the recipient is suspected of activity relating to terrorism, including terrorist financing or other support (*see* Part D of this Section VI for guidance on communicating suspicious information to the appropriate authorities); [7]

[6] Charities should also be mindful of the possibility that a recipient may have changed its name or transformed its organizational structure to avoid being associated with prior questionable activity. If a charity has any reason to believe that the recipient is operating under a different identity or has used a different name in the past, the charity should undertake reasonable efforts to uncover any such prior identity or name.

[7] One example of publicly available information of which charities should be aware is the Terrorist Exclusion List (the ''TEL''). The TEL was created pursuant to the USA PATRIOT Act, which authorizes the Secretary of State to designate organizations or groups for inclusion on the TEL in consultation with or upon the request of the Attorney General. Inclusion on the TEL allows the U.S. Government to exclude or deport aliens who provide material assistance to, or solicit assistance for, designated TEL organizations. Although many of the organizations included on the TEL are also included on the Office of Foreign Assets Control (''OFAC'') SDN List, several TEL organizations are not listed on the SDN List because of the different purposes and legal criteria associated with these lists.

TEL designations do not trigger any legal obligations for U.S. persons; however, the TEL does

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2. As U.S. persons, U.S.-based charities must comply with all Office of Foreign Assets Control (''OFAC'') administered sanctions programs.[8] Among other precautions, the charity should assure itself that recipients do not appear on OFAC's master list of Specially Designated Nationals (the ''SDN List''), maintained on OFAC's Web site at *http://www.treas.gov/offices/enforcement/ofac/sdn/*.[9]

3. With respect to key employees, board members, or other senior management at a recipient's principal place of business, and for key employees at the recipient's other business locations, the charity should obtain the full name in English, in the language of origin, and any acronym or other names used; nationality; citizenship; current country of residence; and place and date of birth. The charity should assure itself that none of these individuals is sanctioned by OFAC. Moreover, charities should be aware that other nations may have their own lists of designated terrorist-related individuals, entities, or organizations pursuant to national obligations arising from United Nations Security Council Resolution 1373 (2001).[10]

4. With respect to the key employees, board members, or other senior management described in the preceding paragraph, the charity should also consider, on the basis of risk, consulting publicly available information (*e.g.*, through public database or Internet searches) to ensure that such parties are not suspected of activity relating to terrorism, including terrorist financing or other support (*see* Part D of this Section VI for guidance on communicating suspicious information to the appropriate authorities); and

5. The charity should require recipients to certify that they do not employ, transact with, provide services to, or otherwise deal with any individuals, entities, or groups that are sanctioned by OFAC, or with any persons known to the recipient to support terrorism.

C. The charity should conduct basic vetting of its own key employees as follows:

1. The charity should consult publicly available information, including information available via the Internet, to determine whether any of its key employees is suspected of activity relating to terrorism, including terrorist financing or other support; and

2. The charity should assure itself that none of its key employees is sanctioned by OFAC.

D. Should a charity's vetting practices lead to a finding that any of its own key employees, any of its recipients, or any of the key employees, board members, or other senior management of its recipients is suspected of activity relating to terrorism, including terrorist financing or other support, the charity should act as follows:

1. If there is a valid or potentially valid match between the name of one of the individuals or organizations listed above and a name on the SDN List, the charity should immediately report this match to OFAC and seek further guidance. Charities should report the match through OFAC's hotline at 1–800–540–6322; and

2. The charity can provide information on any suspicious activity that does not directly involve an OFAC match through a referral form available on Treasury's Web site at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.* In addition, a charity should simultaneously report suspicious activity to the Federal Bureau of Investigation through its local field offices. A list of the locations and phone numbers of the FBI's field offices is available at *http://www.fbi.gov/contact/fo/fo.htm.*

E. The charity should review the financial and programmatic operations of each recipient as follows:

1. The charity should require periodic reports from recipients on their operational activities and their use of the disbursed funds;

2. The charity should require recipients to take reasonable steps to ensure that funds provided by the charity are not distributed to terrorists or their support networks. Periodically, a recipient should apprise the charity of the steps it has taken to meet this goal; and

3. The charity should perform routine, on-site audits of recipients to the extent possible—consistent with the size of the disbursement, the cost of the audit, and the risks of diversion or abuse of

provide charities with additional terrorist-related information that may assist charities in making well-informed decisions on how best to protect themselves from terrorist abuse or association. For further information regarding the TEL, including access to the list containing all TEL designees, please refer to the U.S. Department of State's Web site at *http://www.state.gov/s/ct/rls/fs/2004/32678.htm.*

[8] OFAC sanctions programs include those relating to particular countries or regimes (country-based programs), as well as those relating to groups, individuals, or entities engaged in specific activities (list-based programs). Sanctions programs normally: (i) Prohibit U.S. persons from engaging in certain transactions, such as trade in goods and services and financial transactions, and/or (ii) require U.S. persons to block the assets and property of persons designated under the relevant Executive order or law. The particular prohibitions and/or obligations of U.S. persons vary by program. OFAC can issue licenses to U.S. persons to engage in transactions that would otherwise be prohibited, if there is a policy-permissible reason to do so, and if permitted by statute.

For further information on OFAC-administered sanctions programs and licensing under these programs, please see *http://www.treas.gov/offices/enforcement/ofac.*

OFAC guidelines for non-governmental organizations wishing to undertake humanitarian activities in sanctioned countries are available at *http://www.treas.gov/offices/enforcement/ofac/regulations/ngo_reg.pdf.*

Other helpful guidance materials for charities relating to protection from terrorist abuse may be found at *http://www.treas.gov/offices/enforcement/key-issues/protecting/index.shtml.*

[9] The master SDN List is an integrated listing of designated parties with whom U.S. persons are prohibited from providing services or conducting transactions and whose assets are blocked. OFAC's designations are available in a variety of formats and can easily be broken down into subsets of the master list by program, by country of residency, individuals vs. entities, and other variations for appropriate use in a charity's risk-based approach. Each charity should determine which OFAC listings align with the specific risks the charity faces in its operations and should check recipients accordingly.

OFAC routinely updates information on its targets, including persons designated under country-based and list-based economic sanctions programs, such as individuals and entities designated under the various Executive orders and statutes aimed at terrorism. OFAC offers a free email subscription service that enables subscribers to keep current with these updates. With respect to terrorism-related OFAC sanctions programs, SDN listings include persons designated under Executive Order 13224, Executive Order 12947, or the Antiterrorism and Effective Death Penalty Act of 1996, as amended; such persons are called ''Specially Designated Global Terrorists'' or ''SDGTs'', ''Specially Designated Terrorists'' or ''SDTs'', or ''Foreign Terrorist Organizations'' or ''FTOs'', respectively. SDN listings also include parties subject to OFAC sanctions pursuant to other list-based programs (such as counter-WMD proliferation and counter-narcotics) and country-based programs.

In addition to checking appropriate SDN listings, charities should consult OFAC's Web site for other information relating to sanctioned activities or countries that may implicate their operations.

[10] Under United Nations Security Council Resolution 1373 (2001) (UNSCR 1373), UN Member States must generally freeze without delay the funds and other financial assets or economic resources of persons financing or otherwise supporting terrorist activity or terrorist-related individuals, entities, or organizations. In addition, UN Member States must generally prohibit their nationals from engaging in transactions with such parties. For example, the SDN List incorporates those parties designated by the United States pursuant to national obligations under UNSCR 1373.

This information regarding UNSCR 1373 is intended to assist charities in developing their own risk-based programs based upon a full understanding of the law in those jurisdictions in which they may operate. Charities operating in a foreign jurisdiction may choose to take the additional precautionary measures of determining whether that jurisdiction maintains a national list under UNSCR 1373 and screening the identities of recipient organizations (including principal individuals and senior employees) against any such list. Such precautionary measures may protect charities from potential sanctions or other consequences to which they might be subject from foreign jurisdictions as a result of engaging in transactions with individuals, entities, or organizations deemed to be financing or otherwise supportive of terrorist activity under the laws of those jurisdictions.

charitable resources—to ensure that the recipient has taken adequate measures to protect its charitable resources from diversion to, or abuse by, terrorists or their support networks.

[FR Doc. 05–23854 Filed 12–7–05; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–133446–03]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing Temp and final regulation, REG–133446–03, Guidance on Passive Foreign Company (PFIC) Purging Elections.

DATES: Written comments should be received on or before February 6, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Guidance on Passive Foreign (PFIC) Purging Elections.

OMB Number: 1545–1965.

Regulation Project Number: REG–133446–03.

Abstract: The IRS needs the information to substantiate the taxpayer's computation of the taxpayer's share of the PFIC's post-1986 earning and profits.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7015 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (Gaming Industry).

DATES: Written comments should be received on or before February 6, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545–1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 43 hr., 40 min.

Estimated Total Annual Burden Hours: 4,367.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7016 Filed 12–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13614

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13614, Interview and Intake Sheet.

DATES: Written comments should be received on or before February 6, 2006, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Interview and Intake Sheet.

OMB Number: 1545–1964.

Form Number: 13614.

Abstract: Form 13614 contains a standardized list of required intake questions to guide volunteers in asking taxpayers basic questions about themselves. The intake sheet is an effective tool for ensuring that critical taxpayer information is obtained and applied during the interview process.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, business or other for-profit organizations, the Federal Government and not-for-profit institutions.

Estimated Number of Respondents: 1,056,049.

Estimated Time per Respondent: 5 hrs.

Estimated Total Annual Burden Hours: 211,210.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–7017 Filed 12–7–05; 8:45 am]

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Federal Register

Thursday,
December 8, 2005

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229 and 238

Passenger Equipment Safety Standards; Miscellaneous Amendments and Attachments of Safety Appliances on Passenger Equipment; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229 and 238

[Docket No. FRA–2005–23080, Notice No. 1]

RIN 2130–AB67

Passenger Equipment Safety Standards; Miscellaneous Amendments and Attachments of Safety Appliances on Passenger Equipment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to clarify and amend its existing regulations in an effort to address various mechanical issues relevant to the manufacture, efficient utilization, and safe operation of passenger equipment and trains that have arisen since FRA's original issuance of the Passenger Equipment Safety Standards. FRA proposes miscellaneous amendments to its existing regulations in five areas by: Clarifying the terminology related to piston travel indicators; providing alternative design and additional inspection criteria for new passenger equipment not designed to allow inspection of the application and release of the brakes from outside the equipment; permitting some latitude in the use of passenger equipment with redundant air compressors when a limited number of the compressors become inoperative; recognizing current locomotive manufacturing techniques by permitting an alternative pneumatic pressure test for main reservoirs; and adding provisions to ensure the proper securement of unattended equipment. FRA is also clarifying the existing regulatory requirements related to the attachment of safety appliances and is proposing an identification and inspection protocol to address passenger equipment containing welded safety appliances or welded safety appliance brackets or supports. Finally, FRA is proposing to permit railroads the ability to apply out-of-service credit to certain periodic maintenance requirements.

DATES: (1) Written comments must be received by February 17, 2006. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to January 17, 2006, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2005–23080, may be submitted 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:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to 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: George Scerbo, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6247), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6036).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

In September of 1994, the Secretary of Transportation convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Section 215 of the Act, is now codified at 49 U.S.C. 20133.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. *See* 49 CFR 1.49(m).

II. Proceedings to Date

On June 17, 1996, FRA published an advanced notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Working Group, FRA published a Notice of Proposed Rulemaking (NPRM) on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule establishing safety standards for passenger equipment, which was published on May 12, 1999. *See* 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of some of the requirements contained in the final rule. These petitions generally related to the following subject areas: Structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment,

the movement of defective passenger equipment, and other miscellaneous mechanical-related provisions contained in the final rule. *See* 65 FR 41284. On April 23, 2002 and June 25, 2002, FRA published two additional responses to the petitions for reconsideration addressing the remaining issues raised in the petitions. *See* 67 FR 19970, and 67 FR 42892.

Subsequent to the issuance of these responses, FRA and interested industry members began identifying various issues related to the new passenger equipment safety standards with the intent that FRA would address the issues through FRA's Railroad Safety Advisory Committee (RSAC). On May 20, 2003, FRA presented, and the RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions useful to advance the safety of rail passenger service. The RSAC established the Passenger Equipment Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Due to the variety of issues involved the Working Group established a number of smaller task forces, with specific expertise, to develop recommendations on various subject-specific issues. One of these task forces, the Mechanical Issues Task Force (Task Force), was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment.

This proposal is the result of FRA's review and consideration of the recommendations of the Working Group and the full RSAC. With the exception of the proposed provisions related to the attachment of safety appliances on passenger equipment and the proposed provision involving out-of-service credit, FRA has accepted and now proposes the consensus recommendations made by the Working Group and adopted by the full RSAC as its recommendation to FRA. At the October 26–27, 2004, meeting of the full Working Group, FRA withdrew the task related to the consideration of handling the attachment of safety appliances on passenger equipment from the RSAC. FRA determined that consensus on this issue could not be reached in the RSAC process and determined that it would have to proceed with a proposal on its own. Therefore, FRA developed the proposed provisions related to the attachment of safety appliances unilaterally based on its own expertise in the area and based on discussions and information developed by the Working Group and Task Force. FRA also did not seek consensus in the RSAC process for the proposed provision related to out-of service credit. This issue is being addressed on FRA's own accord in response to the American Public Transportation Association's petition for rulemaking dated March 28, 2005. Consequently, FRA did not and will not seek RSAC consensus on these issues nor will it discuss any comments received on these proposed provisions with the Working Group or RSAC when developing a final rule on those matters. In order to conserve agency resources and prevent duplicative production of rulemaking documents, FRA has included its proposed provisions related to safety appliances on passenger equipment and out-of-service credit in this notice.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO).
American Association of State Highway & Transportation Officials (AASHTO).
American Public Transportation Association (APTA).
American Short Line and Regional Railroad Association (ASLRRA).
American Train Dispatchers Association (ATDA).
Association of American Railroads (AAR).
Association of Railway Museums (ARM).
Association of State Rail Safety Managers (ASRSM).
Brotherhood of Locomotive Engineers and Trainmen (BLET).
Brotherhood of Maintenance of Way Employes Division (BMWED).
Brotherhood of Railroad Signalmen (BRS).
Federal Transit Administration (FTA).*
High Speed Ground Transportation Association (HSGTA).
International Association of Machinists and Aerospace Workers.
International Brotherhood of Electrical Workers (IBEW).
Labor Council for Latin American Advancement (LCLAA).*
League of Railway Industry Women.*
National Association of Railroad Passengers (NARP).
National Association of Railway Business Women.*
National Conference of Firemen & Oilers.
National Railroad Construction and Maintenance Association.
National Railroad Passenger Corporation (Amtrak).
National Transportation Safety Board (NTSB).*
Railway Supply Institute (RSI).
Safe Travel America (STA).
Secretaria de Communicaciones y Transporte.*
Sheet Metal Workers International Association (SMWIA).
Tourist Railway Association Inc.
Transport Canada.*
Transport Workers Union of America (TWU).
Transportation Communications International Union/BRC (TCIU/BRC).
United Transportation Union (UTU).
*Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to

reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On May 20, 2003, FRA presented, and the RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions useful to advance the safety of rail passenger service. The Working Group was established to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, included the following:

- AAR, including members from BNSF Railway Company (BNSF); CSX Transportation, Incorporated (CSX); and Union Pacific Railroad Company (UP);
- APTA, including members from Illinois Commuter Rail Corporation (METRA); Long Island Rail Road (LIRR); Metro-North Railroad (MNR); Southeastern Pennsylvania Transportation Authority (SEPTA); Southern California Regional Rail Authority (SCRRA); Saint Gobian Sully NA; LDK Engineering; and Herzog Transit Services, Incorporated;
- Amtrak; AAPRCO; AASHTO; BLET; BRS; HSGTA; IBEW; NARP; RSI; SMWIA; STA; TCIU/BRC; TWU; and UTU.

The NTSB met with the Working Group and provided staff advisors when possible. In addition, staff from the U.S. DOT Volpe National Transportation Systems Center (Volpe) attended many of the meetings and contributed to the technical discussions. Due to the variety of issues involved, the Working Group established a number of smaller task forces, with specific expertise, to develop recommendations on various subject-specific issues. Members of the task forces included various representatives from various organizations that were part of the larger Working Group. One of these task forces, the Mechanical Issues Task Force (Task Force), was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment.

The Working Group and the related Task Force created by the Working Group conducted a number of meetings and discussed each of the matters proposed in this NPRM. Minutes of these meetings have been made part of the docket in this proceeding. As discussed above, FRA withdrew the task related to the consideration of handling the attachment of safety appliances on passenger equipment from the RSAC on October 27, 2004. FRA also did not seek consensus in the RSAC process for the proposed provision related to out-of-service credit. This issue is being addressed on FRA's own motion in this proceeding in response to APTA's petition for rulemaking dated March 28, 2005. Thus, the Working Group did not reach consensus on the proposed provisions related to these issues, and no recommendation was provided to the full RSAC. FRA unilaterally developed the proposed language related to the attachment of safety appliances and safety appliance arrangements on new and existing passenger equipment and did not seek Working Group or full RSAC consensus. The Working Group did reach full consensus on the proposed regulatory provisions addressing the other mechanical issues contained in this proposal on October 26 and 27, 2004, and on September 7, 2005. The Working Group presented its recommendations to the full RSAC for its concurrence on January 26, 2005 and October 11, 2005. All of the members of the full RSAC in attendance at those meetings accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendation became the full RSAC's recommendation to FRA in this matter. After reviewing the full RSAC's recommendation, FRA adopted the recommendation with minor changes for purposes of clarity. FRA subsequently completed the development and drafting of this proposal based on the broad regulatory recommendations made by the full RSAC.

Throughout the preamble discussion of this proposal, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group or related Task Force. When using this terminology, FRA is referring to views, statements, discussions or positions identified or contained in either the minutes of the Working Group and Task Force meetings. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the preceding **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

IV. Technical Background

A. Redundancy of Air Compressors

One of the issues identified for consideration by the Working Group related to recognition of redundant systems or components on certain types of passenger equipment and providing potential relief when these redundant systems or components become inoperative or ineffective. The LIRR through APTA initially requested a rule change concerning electric multiple unit (MU) locomotives operated in train sets that by design have redundancy of systems or components such as air compressors and auxiliary power inverters. These parties recommended that if one of these types of redundant components or systems was found inoperative or ineffective during a calendar day exterior mechanical inspection, it should be permitted to remain in service until the next calendar day exterior mechanical inspection; provided, the safety and integrity of the train set is not compromised as verified by a qualified mechanical person. The Task Force discussed the issue in detail and determined that the only redundant components that should be provided some leeway when found defective were air compressors on MU passenger locomotives operated in train sets. At the May 11 and 12, 2004, meeting, the Working Group approved the Task Force's substantive approach and agreed to have the Task Force draft a recommendation for its approval. The Task Force developed a proposed recommendation which was approved by the Working Group on October 26, 2004 and by the full RSAC on January 26, 2005. FRA reviewed and agrees with the recommendation and has included it in this proposal.

MU passenger locomotives are generally operated as married pairs, but in some cases they can be operated as single or triple units. In the case of the married pairs, each pair of MU locomotives share a single air compressor. When operated in triple units, the three MU locomotives generally share two air compressors, and single-unit MU locomotives are equipped with their own air compressor. The amount of air required to be produced by the air compressors is based on the size of the brake pipe and the brake cylinder reservoirs, the size of which is based on the calculated number of brake application-and-release cycles the train will encounter. In addition, the compressed air produced by the air compressors is shared within

the consist either by utilizing a main reservoir equalizing pipe or, in single pipe systems, by utilizing the brake pipe which is then diverted to the brake cylinder supply reservoir and other air-operated devices by use of a governor arrangement. Therefore, a passenger train set consisting of numerous MU locomotives will have multiple air compressors providing the train consist with the necessary compressed air. FRA agrees with the determinations of the Task Force that a loss of compressed air from a limited number of air compressors in such a train will not adversely effect the operation of the train's brakes or other air-operated components on the train.

At the Task Force meetings, the railroads and air brake manufacturers provided information demonstrating that the safety of a train set is not compromised when a pre-determined number of inoperative air compressors are allowed to continue to operate in service on a MU train set. On such train sets, the air compressors are applied by technical specification to a certain number of cars such as one per married pair, two per triplet, and so on. The technical specifications for these air compressors generally allow for a duty cycle (percentage of operating capacity) for each air compressor that is something less than 50 percent. In fact, some technical specifications limit the air compressor duty cycle to 33 percent. This means that on MU train sets the available air compressors are required to operate at only 33 to 50 percent of their operational capacity. One of the major reasons for imposing these low duty cycles is to ensure that adequate air pressure is available if one or more of the other air compressors in the train set is not operating properly. Thus, these systems are currently designed to function properly even in the event that a limited number of air compressors become inoperative while the train is in service. Moreover, even in the unlikely event that an MU passenger train set would lose all of its air compressors, then the air brakes would apply and would remain applied until sufficient compressed air is restored to the system. Consequently, FRA does not see any adverse impact on the operational safety of these types of trains if they are permitted to operate for a relatively short period of time with a limited number of air compressors being inoperative or ineffective.

This NPRM proposes to permit the continued operation of MU train sets with a limited number of inoperative or ineffective air compressors to continue to be used in passenger service until the next exterior calendar day mechanical inspection when found at such an inspection. The proposal would require a railroad to determine through data, analysis, or actual testing the number of inoperative or ineffective air compressors that could be in an MU train set without compromising the integrity or safety of the train set based on the size and type of train and the train's operating profile. The railroad would be required to submit the maximum number of air compressors permitted to be inoperative or ineffective on its various trains to FRA before it could begin operation under the proposed provision and would be required to retain and make available to FRA any data or analysis relied on to make those determinations. The proposal would also require a qualified maintenance person (QMP) to verify the safety and integrity of any train operating with inoperative or ineffective air compressors before the equipment continues in passenger service. In addition, the proposal requires notification to the train crew of any inoperative or ineffective air compressors and requires that a record be maintained of the defective condition. FRA believes these proposed provision will ensure the safety of passenger operations while providing the railroads additional flexibility in handling defective or inoperative equipment.

FRA seeks comment from interested parties regarding any safety concerns related to the proposed flexibility for continuing to operate MU train sets with a minimal number of inoperative air compressors for an additional calendar day.

B. Pneumatic Testing of Locomotive Main Reservoirs

The current regulations contained at 49 CFR 229.31(a) relating to main reservoir tests requires that a hydrostatic (water) test of a main reservoir be conducted before it is originally placed in service or before an existing main reservoir is placed back in service after being drilled as provided for in § 229.31(c). At the Working Group and Task Force meetings, the manufacturers of main reservoirs requested the ability to conduct a pneumatic (air) test of the reservoirs in lieu of the currently required hydrostatic test. The request was limited to providing relief only for those tests required before a main reservoir is originally placed in service and after an existing main reservoir is drilled.

The companies that manufacture reservoirs for the rail industry, whether the reservoir is utilized as a main reservoir or reservoir(s) utilized for other purposes, must have an American Society of Mechanical Engineers (ASME) certification. The reservoirs, both main and other, manufactured by these companies are designed and certified to meet the requirements of the ASME Boiler and Pressure Vessel Code. In addition, reservoirs utilized as main reservoirs on locomotives are also manufactured and certified to meet the requirements for such contained in part 229 of the Federal regulations. Currently, all passenger car reservoirs are pneumatically tested after fabrication and before the application of an interior protective coating. This process is utilized so that reservoirs may be repaired if the reservoir does not pass the initial test requirements. If the interior protective coating is applied prior to testing, any weld repairs cannot be performed, as the interior coating would be damaged.

The rationale for originally requiring that the main reservoirs be tested hydrostatically was based on the safety concerns should a main reservoir catastrophically fail during the testing. The likelihood of injury is minimized by having the reservoir filled with a liquid rather than air. However, since the original drafting of the locomotive regulations, manufacturers of reservoirs have implemented and developed both equipment and procedures to ensure that test personnel are adequately shielded when conducting the testing. The manufacturers have been performing pneumatic testing on reservoir for years and FRA is not aware of any injury related to such testing in manufacturer-controlled facilities. Thus, the safety concerns originally attached to pneumatic testing have been minimized, if not eliminated, when conducted at properly equipped manufacturer facilities.

The ASME code currently utilized by all manufacturers of main reservoirs allows for the pneumatic testing of the reservoirs when the introduction of liquid cannot be tolerated. The introduction of water to perform hydrostatic testing on main reservoirs creates a problem because if the liquid is not completely removed and the reservoir interior completely dried, the moisture results in poor adhesion or a lower coating of film than required. This condition has the potential of causing interior corrosion and premature failure of the reservoir. Thus, rather than creating this potential, FRA agrees with the recommendation of the RSAC that it would be both safer and more efficient to permit the manufacturers of main reservoirs to utilize pneumatic testing to meet the requirements contained in 49 CFR 229.31. Consequently, FRA is

proposing to permit pneumatic testing of newly manufactured main reservoirs and reservoirs that are newly drilled and tested at a manufacturer's facility.

It should be noted that FRA is limiting the ability to conduct pneumatic testing of the main reservoirs at only those facilities with appropriate safeguards in place to ensure the safety of the personnel conducting the testing. After a reservoir is installed on a locomotive, FRA believes that hydrostatic testing would be the only testing method that adequately ensures the safety and protection of the personnel that are performing the test or working near the installed reservoir. In order to make this intent clear, FRA has modified the language of the recommendation made by the RSAC. FRA has added language to at the end of proposed paragraph (c) of § 229.31 to make clear that pneumatic testing of a reservoir currently in use and newly drilled may only be conducted by a manufacturer of main reservoirs in a safe environment. In other circumstances, the proposal makes clear a hydrostatic test of the reservoir must be conducted.

FRA seeks comment and information from interested parties regarding the proposal to permit the manufacturers of main reservoirs to pneumatically test the reservoirs to meet the requirements of 49 CFR part 229. Specifically, FRA seeks comment or information on the following:

1. Are there any safety hazards or any known injuries or accidents related to conducting pneumatic testing as proposed in this notice?

2. Are there any additional restrictions or requirements that should be imposed when conducting pneumatic testing of main reservoirs as proposed in this notice?

3. Are the estimated economic costs and benefits associated with proposed flexibility accurate?

C. Design of New Passenger Equipment.

The manufacturers and railroad representative on the Working Group and Task Force sought clarification of the provision contained in 49 CFR 238.231(b). This section requires the brake systems on equipment ordered on or after September 8, 2000, or placed in service on or after September 9, 2002, to be designed so as not to require an inspector to go on, under, or between the equipment to observe the brake actuation or release. At the Task Force meetings, FRA made clear that this requirement is a design standard and was not intended to prohibit or limit the conduct of brake or mechanical inspections required to be conducted in part 238. FRA realizes that in order to perform many of the brake and mechanical inspections required by the regulations an inspector will have to go on, under, or between the equipment. FRA has acknowledged this practice and railroads have effectively conducted these types of inspections in this manner for decades.

The plain language of § 238.231(b) requires new equipment to be designed to allow direct observation of the brake actuation and release without fouling the equipment. The preamble to the final rule discusses alternative design approaches using some type of piston travel indicator or piston cylinder pressure indicator on equipment whose design makes it impossible to meet this requirement. *See* 64 FR 25612 (May 12, 1999). FRA's intent was that this piston travel indicator could be a device similar to the definition of ''actuator'' contained in § 238.5 or some sort of piston cylinder pressure indicator. The rule text and related preamble make clear that the actuation and release of the brake (or a direct indication of such) be able to be observed without an inspector going on, under, or between the equipment. FRA does not believe that truck pressure indicators (which provide no information on piston travel or piston cylinder pressure) meet this requirement. FRA recognized that the envisioned ''indicators'' discussed in the preamble to § 238.231(b) may be ahead of the technological curve for passenger equipment currently being delivered and that which may be delivered in the near future. Thus, FRA noted its willingness to discuss interim inspection protocols in lieu of applying piston travel indicators on such equipment.

The Task Force discussed the issue in detail as a number of railroads were in the process of receiving new equipment, such as bi-level coaches and other low-slung equipment, the design of which does not allow observation of the brake actuation and release of the brake without going on, under, or between the equipment. Several railroads and manufacturers noted that the type of piston travel indicators envisioned by FRA to meet the § 238.231(b) requirement were not currently available and even if they could be developed in the near future, they would likely be a maintenance problem and unreliable. Representatives of rail labor also questioned the viability and need for the type of piston travel indicators discussed in the preamble to the final rule. These participants did not believe that any type of mechanical indicator should take the place of direct visual inspection of the brake system components. Consequently, the members of the Task Force believed that the best approach to the issue was to provide additional inspection protocols for new equipment that are designed in a manner that makes observation of the actuation and release of the brakes impossible from outside the plane of the equipment rather than mandating the use of untested and potentially unreliable piston travel indicators.

FRA and the Task Force believe that the brake system and mechanical components on bi-level and other low-slung passenger equipment can be adequately inspected through the daily brake and mechanical inspections currently required in the Federal regulations; provided, appropriate blue signal protections are established for the personnel required to perform such inspections. These daily inspections permit a visual inspection of a large percentage of the brake and mechanical components and over a period of a few days all portions of the brake system and mechanical components will be visually observed. However, because the necessary design of some new equipment makes the daily inspections of the equipment more difficult, does not permit visual observation of the brake actuation and release from outside the plane of the vehicle, and because no reliable mechanical device is currently available to provide a direct indication of such, FRA and the Task Force believe it is necessary to adopt additional inspection protocols for this type of equipment.

The inspection regimen being proposed in this notice will be applicable to equipment placed in service on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release. The proposed requirements related to this type of equipment are similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. *See* Docket Number FRA–2004–18063. The proposed provisions would require such equipment to be equipped with either piston travel indicators or brake indicators as defined in § 238.5. The equipment would also be required to receive a periodic brake inspection by a QMP at intervals not to exceed five in-service days and the proposed inspection would have to be performed while the equipment is over an inspection pit or on a raised track. In addition, the railroad performing the

proposed inspection would be required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. FRA believes that these proposed inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual visual observation of the brake actuation and release without fouling the vehicle.

D. Safety Appliances

Several issues regarding the attachment of safety appliances on passenger equipment have arisen over the last decade. These issues generally involve the method by which safety appliances on existing passenger equipment are required to be attached, either directly to the car or locomotive body or by use of a bracket or support. It has come to FRA's attention, due to the investigation of these issues, that a significant number of existing passenger cars and locomotives contain some safety appliances that are attached to the equipment by some form of welding, typically the welding of a bracket or plate to which the safety appliance is then mechanically fastened. In the last two decades, manufacturers of certain passenger equipment have used welding on some of the safety appliance arrangements of newly built equipment. Some segments of the passenger industry believe welding of these arrangements is acceptable and have sought a review of FRA's historical prohibition on the welding of safety appliance arrangements. These parties believe that new and improved welding technology, the implementation of new tracking standards, proper quality control, and historical documentation support the use of welding on safety appliance arrangements.

Historically, FRA has required that safety appliances be mechanically fastened to the car structure. FRA has also historically required that any brackets or supports applied to a car structure solely for the purpose of securing a safety appliance must be mechanically fastened to the car body. See MP&E Technical Bulletin 98–14 (June 15, 1998). FRA's prohibition on the weldment of safety appliances and their supports is based on its longstanding administrative interpretation of the regulatory ''manner of application'' provisions contained in 49 CFR part 231 which require that safety appliances be ''securely fastened'' with a specified mechanical fastener. *See e.g.*, 49 CFR §§ 231.12(c)(4); 231.13(b)(4); 231.14(b)(4) and (f)(4)). FRA's prohibition on the welding of safety appliances is based on its belief that welds are not uniform, are subject to failure, and are very difficult to inspect to determine if the weld is broken or cracked. Mechanical fasteners, by contrast, are generally easy to inspect and tend to become noticeably loose prior to failure.

Generally, FRA's longstanding interpretation of the regulation prohibiting the welding of safety appliances has not been seriously questioned or opposed since its inception. Virtually all railcars manufactured for use in the United States have their safety appliances and their safety appliance brackets and supports mechanically fastened to the car body, unless a specific exception has been provided by FRA or the regulations. FRA acknowledges that it has permitted limited welding of certain safety appliances or their brackets and supports on locomotives and tanks cars. *See* MP&E Technical Bulletins 98–48 and 00–06 (June 15, 1998 and August 7, 2000, respectively). These exceptions were provided because there were no other alternative methods available for mechanically fastening these safety appliance arrangements.

Currently, freight railroad equipment complies with the existing regulations and FRA's interpretation of those provisions. Traditionally, FRA has not permitted welding of safety appliance arrangements on freight equipment. In addition, the AAR does not permit the welding of safety appliance arrangements. FRA continues to believe that, except in limited circumstances, the safety appliances on freight equipment should not be attached with welding under any condition. This is primarily due to the extreme differences in use and inspection between passenger and freight equipment. Thus, FRA does not intend to permit welded safety appliances or their attachment in that segment of the industry. Consequently, FRA is limiting any relief being proposed in this proceeding to safety appliance arrangements on passenger equipment.

Although FRA has remained consistent in its prohibition on the weldment of safety appliances and their supports, a significant amount of passenger equipment has been manufactured and used in revenue service for a number of years with safety appliances being attached to the car body using some form of welding. Currently, FRA is aware of approximately 3,000 passenger cars or locomotives that have safety appliances or safety appliance brackets or supports welded to the body of the equipment. Some units of this equipment were introduced into service within the last few years; others have been in service for more than a decade. Some of the 3,000 units noted above have been the subject of formal waiver requests pursuant to the provisions contained in 49 CFR part 211. *See* Docket Numbers FRA–2000–8588 and FRA–2000–8044.

In an effort to fully develop the issues relating to the welding of safety appliances on existing passenger equipment, FRA conducted an informal safety inquiry and subsequently submitted the issue to RSAC in this proceeding. On June 17, 2003, a informal safety inquiry was held in Washington, DC, where all interested parties were permitted to express their concerns relating to FRA's long-standing interpretation prohibiting welded of safety appliance arrangements. Representatives from APTA, AAR, consultants, manufacturers, and union representatives gave presentations or provided comments expressing their points of interests or concerns. FRA also referred the issue to the RSAC process in this proceeding, which in turn assigned the issue to the mechanical Task Force, to aid in developing and determining if there is a practical application where welding may be suitable and to consider methods by which FRA could revise or clarify its position for future guidance and regulatory standards. Although the Task Force engaged in productive discussions and developed considerable information relating to the issue, the Task Force could not reach a consensus on any recommendation. Consequently, on October 27, 2004, FRA withdrew the task related to the consideration of handling the attachment of safety appliances on passenger equipment from the RSAC and decided to proceed with the development of a regulatory proposal unilaterally.

At the safety inquiry and the discussions within the Task Force, ATPA and its primary members all indicated that FRA needs to provide clarity and guidance to the industry relating to passenger car safety appliance arrangements, particularly in the area of attaching brackets and supports. FRA has always believed that the industry knew exactly what was intended by FRA's interpretation of the regulations related to ''mechanical fastening.'' FRA believes that in all instances where it has permitted welding, the allowance was the direct result of not having any another available option for attaching the required safety appliances. Examples, such as tank cars, locomotives, and other situations mentioned above, indicate that FRA has allowed or

permitted the use of welding in certain very limited circumstances.

FRA considered issues ranging from the initial manufacturing stage to the actual expected life cycle of a weld and the environment in which the equipment operates. FRA is cognizant of the fact that the inspection of welds is at best difficult and potentially costly depending on the type of inspection that might be required. Moreover, the failure mode of welds is very difficult to detect visually and the effects of stress and fatigue may cause welded applications to have higher failure rates towards the end of the life cycle of the equipment. FRA acknowledges that freight and passenger operations involve significantly different environments from a safety appliance standpoint, and likely justifies an allowance for welded safety appliance brackets and supports, at least on existing equipment, and in other instances where the design of a vehicle necessitates such use. In most cases, passenger equipment is inspected on a more regular basis, generally used in captive type service, and experiences far less coupling and uncoupling associated with switching moves inherent in freight operations. FRA also recognizes that it would be extremely costly to the passenger industry to require existing equipment to be retrofitted with new safety appliances when the existing welded attachments have not shown a proclivity for failure at this time.

At the informal safety inquiry and during the Task Force meetings, FRA received information and engaged in discussions relating to the following issues:

- The safety implications related to the continued use of existing passenger equipment with welded safety appliances or welded safety appliance brackets or supports;
- Criteria for determining when an existing piece of passenger equipment with a welded appliance or welded bracket or support is defective or unsafe or both;
- Alternative approaches to mandatory modification of existing equipment (*e.g.*, inspection protocols) and the economic implication of any suggested approach;
- Clarification of existing regulatory requirements as they relate to the welding of safety appliances and their brackets or supports;
- The safety implications and standards that should or could be addressed, were FRA to consider some latitude in allowing existing passenger equipment with welded safety appliances or welded safety appliance supports or brackets, such as:
- What part or parts of an appliance should FRA allow to be welded?
- What quality control standards should apply to the welding process (*e.g.*, industry recognized welding standards)?
- What qualifications/training should the individual performing the welding or inspecting a weld need to possess?
- How should field or shop repairs or both be conducted on equipment with welded safety appliances or supports?
- When should a weld be considered defective?
- What visual and non-destructive inspection techniques or industry recognized standards are appropriate for welds?
- At what interval should welds be inspected?
- What records, if any, should be maintained of these inspections?

Based on the information and views provided at both the informal safety inquiry and through the RSAC process, FRA continues to believe that mechanical fastening provides the best method of attaching safety appliance arrangements and ensures that the safety of railroad employees and the public is not compromised. For this reason, FRA will continue to require the mechanical fastening of safety appliance arrangement wherever possible and proposes to provide alternative solutions for use of welding only on existing passenger equipment and in circumstances when mechanically fastening is not practical due to the design of the vehicle. However, FRA does agree that there may have been some misunderstanding within the passenger rail industry with regard to safety appliance application and that some leeway needs to be provided for existing passenger equipment with welded safety appliance brackets or supports in lieu of retrofitting nearly one-third of the fleet. Thus, in this NPRM, FRA is proposing to provide clarification of the requirements related to the attachment of safety appliance under 49 CFR part 231. In addition, FRA is proposing to permit the continued use of existing passenger equipment with welded safety appliance brackets or supports provided such equipment is identified, inspected, and handled in accordance with the proposed requirements. In developing this proposal, FRA weighed and considered many different factors and concerns, as noted above, relating to welding safety appliances and their brackets or supports.

An additional issue raised by APTA and its member railroads relates to the ability of the industry to develop standards relating to the safety appliance arrangements on new cars of special construction. Throughout the Railroad Safety Appliance Standards, currently contained in 49 CFR part 231; specifically, § 231.12—Passenger-train cars with wide vestibules; § 231.13—Passenger-train cars with open-end platforms; § 231.14—Passenger-train cars without end platforms; and § 231.23—Unidirectional passenger-train cars adaptable to van-type semi-trailer use, there may be inconsistencies and/or opportunities for clarification in the construction of newly built passenger equipment. Many times, it is necessary to reference two or more sections of 49 CFR part 231 to determine if a newly constructed passenger vehicle meets the minimum requirements of the Federal regulations. However, criteria for most of today's new types of passenger car construction are found within 49 CFR 231.18—Cars of special construction. This results from the fact that modern technology in construction of car-building often does not lend itself to ready application of the current 49 CFR 231 requirements. Rather, the designer must adapt several different requirements to meet as closely as possible construction of specific safety appliance arrangements in order to obtain compliance.

Most passenger cars today are constructed outside the United States, and this has exacerbated the problem of varying interpretations of regulations and resulting safety appliance arrangements. At times, different requirements are applied to cars of similar design where both could have been constructed in the same manner. Substantial resources are spent on a regular basis by all parties concerned in review sessions to determine if a car is in compliance prior to construction; and even when the cars are delivered, problems have arisen.

In an attempt to limit these problems, FRA is proposing a method by which the industry may request approval of safety appliance arrangements on new equipment considered to be cars of special construction under 49 CFR part 231. The proposal would permit the industry to develop standards to address many of the new types of passenger equipment introduced into service. The proposal would require these standards, and supporting documentation to be submitted to FRA for agency approval pursuant to the special approval process already contained in the regulation. The proposal makes clear that any approved standard would be enforceable against any person who violates or causes the violation of the approved standards and that the penalty schedule contained in Appendix A to 49 CFR part 231 would

be used as guidance in assessing any applicable civil penalty. The goal of this proposal is to develop consistent safety appliance standards for each new type of passenger car not currently identified in the Federal regulations that ensures the construction of suitable safety appliance arrangements in compliance with 49 CFR part 231. FRA believes the proposal will reduce or eliminate reliance upon criteria for cars of special construction, will improve communication of safety appliance requirements to the industry, and will facilitate regulatory compliance where clarification or guidance is necessary.

Portions of the proposal relating to new passenger equipment are already progressing. By letter dated September 2, 2005, FRA requested APTA to determine if it is feasible to form a group to specifically develop potential safety appliance standards for newly manufactured passenger equipment and provide guidance where existing Federal regulations are not specific to the design of a passenger car or locomotive. On October 11, 2005, APTA informed FRA that it is willing to undertake this effort and is tentatively planning its initial meeting in the beginning of 2006. FRA believes this approach provides an excellent avenue to take advantage of the knowledge and expertise possessed by rail operators and equipment manufacturers when considering safety appliance arrangements on new passenger equipment of unique design. Under the provisions proposed in this NPRM, the standards and guidance developed by this group would need to be submitted to and approved by FRA pursuant to the special approval provisions contained at § 238.21.

FRA seeks comments and views from interested parties relating to the proposed handling of safety appliances on both existing and new passenger equipment. Specifically, FRA seeks information and comment on the following:

- Are there other industry recognized standards relating to welding or the qualifications of persons conducting such welding that should be considered by FRA?
- Are the welding standards referenced by FRA accurately identified and are they the most recent version of the standards?
- Can a standard be developed for determining when a safety appliance bracket or support to which a safety appliance is mechanically attached becomes part of the car body?
- Should it be based on the linear amount of weld?
- To what must the support or bracket be welded?
- Is there a particular type of weld that should be used?
- Are there specific qualifications or standards related to performing such welds?
- Are the cost estimates associated with FRA's proposal relating to existing equipment accurate?
- Is there any other relevant information that should be considered by FRA?

E. Securement of Unattended Equipment

At FRA's suggestion, the Task Force considered issues related to the securement of unattended equipment. FRA noted its concern that existing part 238 failed to adequately address either the inspection of hand or parking brakes or the issues related to the securement of unattended equipment. FRA believes that the rationale for addressing these issues on freight operations is equally applicable to passenger operations. The preamble to the final rule related to 49 CFR part 232 contains an in-depth discussion of the need to address these issues. *See* 66 FR 4156–58 (January 17, 2001). The approach proposed in this proceeding is also consistent with the guidance contained in FRA Safety Advisory 97–1. *See* 62 FR 49046 (September 15, 1997). Further, FRA is aware of several incidents on passenger and commuter operation involving the running away or inadvertent movement of unattended equipment.

Using the provisions contained in the freight power brake regulations at 49 CFR part 232 as a guideline, the Task Force developed a recommendation to address these outstanding issues raised by FRA. As passenger train consists are much shorter and do not possess the tonnage associated with freight trains, the Task Force's recommendation modified the provisions contained in 49 CFR part 232 to make them more readily applicable to passenger operations. The recommendations developed by the Task Force and submitted by the full RSAC are consistent with and based directly on current passenger industry practice. Thus, in FRA's view, they will have no economic or operational impact on passenger operations but will ensure that these best practices currently adopted by the industry are followed and complied with by making them part of the Federal regulations.

The Task Force presented its recommendation on these issues to the full Working Group on September 7, 2005. The Working Group reached consensus on the recommendation and presented the recommendation to the full RSAC and received unanimous concurrence from such on October 11, 2005. FRA has reviewed the recommendations of the full RSAC and has adopted them without change in this proposal.

In this NPRM, FRA proposes a set of requirements to address the securement of unattended equipment. The proposed provisions will require that unattended equipment be secured by applying a sufficient number of hand or parking brakes to hold the equipment and will require railroads to develop and implement a process or procedure to verify that the applied hand or parking brakes will hold the equipment. The proposal will also prohibit a practice known as ''bottling the air'' in a standing cut of cars. The practice of ''bottling the air'' occurs when a train crew sets out cars from a train with the air brakes applied and the angle cocks on both ends of the train closed, thus trapping the existing compressed air and conserving the brake pipe pressure in the cut of cars they intend to leave behind. This practice has the potential of causing, first, an unintentional release of the brakes on these cars and, ultimately, a runaway. A full discussion of the hazards related to this practice is contained in the preamble to the final rule related to freight power brakes. *See* 66 FR 4156–57. Virtually all railroads prohibit this practice in their operating rules, thus FRA does not believe any burden is being imposed on the railroads by including it in this proposal.

The NPRM also proposes a minimum number of hand or parking brakes that must be applied on an unattended locomotive consist or train. Due to the relatively short length and low tonnage associated with passenger trains, FRA does not believe that the more stringent provisions contained in § 232.103(n)(3) are necessary in a passenger train context. Thus, the proposal would require that at least one hand or parking brake be applied in these circumstances; however, the number of applied hand or parking brakes will vary depending on the process or procedures developed and implemented by each covered railroad. In addition, this proposal also contains provisions requiring railroads to develop and implement procedures for securing locomotives not equipped with a hand or parking brake and instructions for securing any locomotive left unattended. As noted previously, FRA is not aware of any railroad which does not already have the proposed procedures or processes in place. Thus, FRA believes that these proposed requirements will impose no burden on

passenger operations covered by 49 CFR part 238.

In addition to addressing specific issues relating to securing unattended equipment, this NPRM also incorporates and adopts the industry's best practices related to the inspection and testing of hand and parking brakes. FRA proposes to require that the hand or parking on other than MU locomotives be inspected no less frequently than every 368 days and that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. The proposal would also require the application and release of the hand or parking brake at each periodic mechanical inspection of passenger cars and unpowered vehicles under § 238.307 and would require a complete inspection of these components every 368 days, with a record being maintained of this annual inspection. The inspection and testing intervals as well as the stenciling and record keeping requirements proposed in this document are consistent with the current practices in the industry and will impose no additional burden on the industry.

V. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 229

Section 229.5 Definitions

FRA is proposing a technical clarification to the definition of ''MU locomotive'' contained in this section. Existing § 229.5 contains a number of definitions to define different types of locomotives covered by the various provisions contained in part 229. These include the general definition of ''locomotive'' as well as various types of locomotives including: ''control cab locomotive,'' ''DMU locomotive,'' and ''MU locomotive.'' At the Task Force meetings representatives of various railroads and equipment manufacturers expressed concern over these definitions, contending that they were confusing and contained some overlap making it difficult to determine which category a particular locomotive fell within. Of particular concern was the current definition of ''MU locomotive.''

The definition of ''MU locomotive'' was recently reissued in its full length when the final rule on Locomotive Event Recorders was published on June 30, 2005. See 70 FR 37939. Subparagraph (2) of the current definition identifies an MU locomotive as ''a multiple unit operated electric locomotive * * * (2) without propelling motors but with one or more control stands.'' This portion of the MU locomotive definition is identical to the definition of ''control cab locomotive.'' In an effort to add clarity and to definitively distinguish an MU locomotive from a control cab locomotive, FRA proposes to add some limiting language to the definition of what constitutes an MU locomotive. Historically, FRA has only considered a locomotive without propelling motors to be an MU locomotive if it has the ability to pick up primary power from a third rail or a pantograph. Consequently, FRA is proposing to add this language to the existing definition of MU locomotive as it is consistent with FRA's historical enforcement and interpretation of the regulation.

Section 229.31 Main Reservoir Tests

FRA is proposing to amend paragraphs (a) and (c) of this section to provide the manufacturers of main reservoirs the option to test main reservoirs pneumatically rather than hydrostatically as currently mandated. The proposed modification would permit a main reservoir to receive a pneumatic test before it is originally placed in service or before an existing main reservoir is placed back in service after being drilled. As discussed in detail in section B of the Technical Background portion of this document, the ASME code currently utilized by all manufacturers of main reservoirs allows for the pneumatic testing of the reservoirs when the introduction of liquid cannot be tolerated. The introduction of water to perform hydrostatic testing on main reservoirs creates a problem because if the liquid is not completely removed and the reservoir interior completely dried, the moisture results in poor adhesion or a lower coating of film than required. This condition has the potential of causing interior corrosion and premature failure of the reservoir.

The rationale for originally requiring that the main reservoirs be tested hydrostatically was based on the safety concerns should a main reservoir catastrophically fail during the testing. The likelihood of injury is minimized by having the reservoir filled with a liquid rather than air. However, since the original drafting of the locomotive regulations, manufacturers of reservoirs have implemented and developed both equipment and procedures to ensure that test personnel are adequately shielded when conducting the testing. The manufacturers have been performing pneumatic testing on reservoirs for years and FRA is not aware of any injury related to such testing in manufacturer-controlled facilities. Thus, the safety concerns originally attached to pneumatic testing have been minimized, if not eliminated, when conducted at properly equipped manufacturer facilities.

In addition to the safety benefits related to pneumatic testing, FRA recognizes that all passenger car main reservoirs are pneumatically tested after fabrication and before the application of an interior protective coating. This process is utilized so that reservoirs may be repaired if the reservoir does not pass the initial test requirements. If the interior protective coating were to be applied prior to testing, any weld repairs could not be performed, as the interior coating would be damaged. Thus, in recognition of current industry practice and in an effort to provide compliance options that are beneficial from a safety perspective, FRA agrees with the recommendation of the RSAC that it would be both safer and more efficient to permit the manufacturers of main reservoirs to utilize pneumatic testing to meet the requirements contained in paragraphs (a) and (c) of this section. Consequently, FRA is proposing to permit pneumatic testing of newly manufactured main reservoirs and reservoirs that are newly drilled and tested at a manufacturer's facility.

It should be noted that FRA is limiting the ability to conduct pneumatic testing of the main reservoirs to only those facilities with appropriate safeguards in place to ensure the safety of the personnel conducting the testing. After a reservoir is installed on a locomotive, FRA believes that hydrostatic testing would be the only testing method that adequately ensures the safety and protection of the personnel that are performing the test or working near the installed reservoir. In order to make this intent clear, FRA has modified the language of the recommendation submitted to FRA from the RSAC. FRA has added language to the end of proposed paragraph (c) to make clear that pneumatic testing of a reservoir currently in use and newly drilled may only be conducted by a manufacturer of main reservoirs in a suitably safe environment. In other circumstances, the proposal makes clear a hydrostatic test of the reservoir must be conducted.

As noted previously, FRA seeks comment and information from interested parties regarding the proposal to permit the manufacturers of main reservoirs to pneumatically test the reservoirs to meet the requirements of 49 CFR part 229. Specifically, FRA seeks comment or information on the following:

1. Are there any safety hazards or any known injuries or accidents related to

conducting pneumatic testing as proposed in this notice?

2. Are there any additional restrictions or requirements that should be imposed when conducting pneumatic testing of main reservoirs as proposed in this notice?

3. Are the estimated economic costs and benefits associated with proposed flexibility accurate?

Section 229.47 Emergency Brake Valve

Section 229.137 Sanitation, General Requirements

FRA is proposing to make a technical clarification to paragraph (b) of § 229.47 and paragraph (b)(1)(iv) of § 229.137 in order to make these sections consistent with the new definition of ''DMU locomotive.'' The recently published final rule on Locomotive Event Recorders added the definition of ''DMU locomotive'' to 49 CFR part 229. *See* 70 FR 37920 (June 30, 2005). This definition was added to part 229 in order to specifically identify diesel-powered multiple unit locomotives. These types of locomotives are just starting to be used by a small number of passenger railroads and FRA wants to be sure that they are adequately addressed by the safety standards contained in part 229. As these types of locomotives are fairly unique, they do not fit cleanly within the regulations as they pertain to traditional locomotives and MU locomotives. In some instances they are treated as traditional locomotives and in others they are treated as MU locomotives. In an effort to clarify the applicability of various provisions contained in part 229, FRA is proposing to amend §§ 229.47 and 229.137 to specifically state that DMU locomotives are covered by these provisions. These proposed clarifications are consistent with FRA's historical application of the regulations to DMU locomotives.

Proposed Amendments to 49 CFR Part 238

Section 238.5 Definitions

FRA is proposing to make two clarifying amendments to the definitions section contained in part 238 by revising the definition of ''actuator'' currently contained in regulation and by adding a new definition for ''piston travel indicator.'' Based on discussions of the Task Force and concerns raised by other parties it appears the term ''actuator'' used by FRA in the Passenger Equipment Safety Standards final rule is a term that many members of the passenger industry associate and use to identify a specific self-contained brake system component that typically consists of a cylinder, piston, and piston rod. FRA was not intending to identify this brake system component when it included the term in § 238.313(g)(3) of the original regulation. FRA notes that the term actuator is used in the definition of ''piston travel'' in this section to refer to the brake system component described above.

In order to prevent and limit any confusion on the part of the regulated community, FRA agrees with the RSAC's recommendation to modify the definition of ''actuator'' to describe the brake system component to which the term has traditionally been attached and which is what the term refers to in the definition of ''piston travel.'' In addition, FRA accepts the RSAC's recommendation to add a new term to part 238 to describe the device originally defined as an ''actuator.'' Therefore, FRA is proposing to add the term ''piston travel indicator'' to describe a device directly activated by the movement of the brake cylinder piston, the disc actuator, or the tread brake unit cylinder piston that provides an indication of piston travel. FRA further proposes for the term ''piston travel indicator'' to replace the term ''actuator'' in § 238.313(g)(3).

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

FRA is proposing to make a conforming change in paragraph (b) of this section to acknowledge the flexibility being proposed in § 238.303(e)(17) of this NPRM relating to inoperative or ineffective air compressors on MU passenger equipment. As discussed in detail above in the Technical Background portion of the preamble and in the section-by-section discussion related to § 238.303 below, FRA is proposing to permit certain MU passenger equipment to continue to be used in passenger service until the next exterior calendar day mechanical inspection.

Section 238.21 Special Approval Procedures

FRA is proposing conforming changes to paragraphs (a) and (c) of this section to recognize the requirements in the proposed provisions relating to safety appliances on both existing and new passenger equipment contained in §§ 238.229 and 238.230 of this notice. These conforming changes recognize the provisions of those sections that require a railroad to obtain FRA approval of welded safety appliance attachment or of an industry-wide standard relating to safety appliance arrangements on new passenger equipment of unique design.

Section 238.229 Safety Appliances—General

In this section, FRA is proposing incorporation and clarification of its long-standing administrative interpretations regarding the attachment of safety appliances and safety appliance brackets and supports. FRA is also proposing an inspection program for permitting existing passenger equipment to remain in service in lieu of requiring retro-fitting of the equipment to eliminate welded brackets or supports. FRA is proposing these provisions unilaterally and did not seek a recommendation or concurrence from RSAC. These issues were discussed above in the Technical Background section of the preamble to the proposed rule. As FRA sees no benefit in reproducing the entire discussion here, interested parties should refer to that discussion when considering the provisions proposed in this section.

Historically, FRA has required that safety appliances be mechanically fastened to the car structure. FRA has also historically required that any brackets or supports applied to a car structure solely for the purpose of securing a safety appliance must be mechanically fastened to the car body. *See* MP&E Technical Bulletin 98–14 (June 15, 1998). FRA's prohibition on the weldment of safety appliances and their supports is based on its longstanding administrative interpretation of the regulatory ''manner of application'' provisions contained in 49 CFR part 231 which require that safety appliances be ''securely fastened'' with a specified mechanical fastener. *See e.g.*, 49 CFR §§ 231.12(c)(4); 231.13(b)(4); 231.14(b)(4) and (f)(4)). FRA's prohibition on the welding of safety appliances is based on its belief that welds are not uniform, are subject to failure, and are very difficult to inspect to determine if the weld is broken or cracked. Mechanical fasteners, by contrast, are generally easy to inspect and tend to become noticeably loose prior to failure.

Generally, FRA's longstanding interpretation of the regulation prohibiting the welding of safety appliances has not been seriously questioned or opposed since its inception. Virtually all railcars manufactured for use in the United States have their safety appliances and their safety appliance brackets and supports mechanically fastened to the car body, unless a specific exception has been provided by FRA or the regulations. FRA acknowledges that it has permitted limited welding of certain safety appliances or their brackets and

supports on locomotives and tanks cars. *See* MP&E Technical Bulletins 98–48 and 00–06 (June 15, 1998 and August 7, 2000, respectively). These exceptions were provided because there were no other alternative methods available for mechanically fastening these safety appliance arrangements.

Although FRA has remained consistent in its prohibition on the weldment of safety appliances and their supports, a significant amount of passenger equipment has been manufactured and used in revenue service for a number of years with safety appliances being attached to the car body using some form of welding. Currently, FRA is aware of approximately 3,000 passenger cars or locomotives that have safety appliances or safety appliance brackets or supports welded to the body of the equipment. Some units of this equipment were introduced into service within the last few years; others have been in service for more than a decade. Some of the 3,000 units noted above have been the subject of formal waiver requests pursuant to the provisions contained in 49 CFR part 211. *See* Docket Numbers FRA–2000–8588 and FRA–2000–8044.

FRA considered issues ranging from the initial manufacturing stage to the actual expected life cycle of a weld and the environment in which the equipment operates. FRA is cognizant of the fact that the inspection of welds is at best difficult and potentially costly depending on the type of inspection that might be required. Moreover, the failure mode of welds is very difficult to detect visually and the effects of stress and fatigue may cause welded applications to have higher failure rates towards the end of the life cycle of the equipment. FRA acknowledges that freight and passenger operations involve significantly different environments from a safety appliances standpoint, and likely justifies an allowance for welded safety appliance brackets and supports, at least on existing equipment, and in other instances where the design of a vehicle necessitates such use. In most cases, passenger equipment is inspected on a more regular basis, generally used in captive type service, and experiences far less coupling and uncoupling associated with switching moves inherent in freight operations. FRA also recognizes that it would be extremely costly to the passenger industry to require existing equipment to be retrofitted with new safety appliances when the existing welded attachments have not shown a proclivity for failure at this time.

Based on the information and views provided at both the special safety inquiry and through the RSAC process, FRA continues to believe that mechanical fastening provides the best method of attaching safety appliance arrangements and ensures that the safety of railroad employees and the public are not compromised. For this reason, FRA will continue to require the mechanical fastening of safety appliance arrangement wherever possible and proposes to provide alternative solutions for use of welding only on existing passenger equipment and in circumstances when mechanically fastening is not practical due to the design of the vehicle. However, FRA does agree that there may have been some misunderstanding within the passenger rail industry with regard to safety appliance application and that some leeway needs to be provided for existing passenger equipment with welded safety appliance brackets or supports in lieu of the costly option of retrofitting nearly one-third of the fleet. With these thoughts in mind and based on information and discussions provided at the informal safety inquiry and the Task Force meeting, FRA is proposing both clarification of the existing requirements related to safety appliance attachment and is providing a method to safely handle the inspection and continued operation of existing passenger equipment with welded safety appliances or welded safety appliance brackets or supports.

Paragraphs (a) and (b) of this proposed section contain FRA's long-standing administrative interpretations prohibiting the use of welding as a means of attaching either a safety appliance or a safety appliance bracket or support. Proposed paragraph (a) makes clear that all passenger equipment continues to be subject to the statutory provisions contained in 49 U.S.C. chapter 203 as well as the regulatory provisions contained in 49 CFR part 231. Proposed paragraph (b) incorporates FRA's long-standing administrative interpretations regarding the welding of safety appliances and their supports. This paragraph makes clear that safety appliances and their brackets or supports are to be mechanically fastened to the car body and specifically states that welding as a method of attachment is generally prohibited. This proposed paragraph also explains that FRA permits the welding of a brace or stiffener used in connection with mechanically fastened safety appliance and provides a definition of what constitutes a ''brace'' or ''stiffener'' in these arrangements.

Paragraph (c) contains proposed exceptions to FRA's general prohibition related to welding safety appliances. Proposed paragraph (c)(1) provides an exception for passenger equipment placed in service prior to January 1, 2007, equipped with a safety appliance that is mechanically fastened to a bracket or support which is welded to the vehicle. Rather than require the retrofitting of existing equipment that currently contain safety appliance brackets or supports that are attached to the equipment by welding, FRA proposes to permit the equipment to remain in service provided that the equipment is identified, inspected, and handled for repair in accordance with the provisions proposed in paragraphs (e) through (k) of this section. FRA believes the proposed identification and inspection plan will ensure the safe operation of equipment currently in service.

Proposed paragraph (c)(2) acknowledges the fact that in some instances, due to the design of a vehicle, safety appliances are required to be directly attached to a piece of equipment by welding. The proposed requirements in this paragraph would be applicable to both existing equipment (*i.e.* equipment placed in service prior to January 1, 2007) and to newly manufactured equipment. The proposed provisions would require railroads to identify each piece of passenger equipment outfitted with a safety appliance welded directly to the vehicle and would require the railroad to provide a detailed rationale explaining how the design of the vehicle or placement of the safety appliance requires the direct welding of the appliance to the equipment on passenger equipment placed in service for the first time on or after January 1, 2007. This paragraph would require that any such safety appliances be inspected and handled in accordance with the proposed inspection and repair provisions contained in paragraphs (g) through (k). FRA notes that only the specifically identified safety appliances would be required to be so inspected and handled.

Proposed paragraph (d) contains standards to clarify when a weld on a safety appliance is to be considered defective. This proposed section makes clear that a weld will be considered defective if it contains any anomaly, regardless of size, that affects the designed strength of the weld. This section also states that weld will be defective if it contains a crack and defines a crack as a fracture of any visibly discernible length or width. Further, this paragraph would require that any repairs made to a defective or cracked weld would have to be made in accordance with the inspection plans

and remedial action provisions proposed in paragraph (g) and (j) of this section.

Paragraphs (e) and (f) contain the proposed provisions relating to the railroad's identification of all existing passenger equipment that contains a welded safety appliance bracket or support. This listing would be required to be submitted to FRA by no later than December 31, 2006, and permits railroads to update the list if they identify equipment after that date. These paragraphs would permit railroads to exclude certain safety appliances from the proposed inspection provisions provided the railroad fully explains the basis for any such exclusion. FRA envisions such exclusions to be limited to situations where inspection of the weld is impossible or in situations where the size and quality of a weld are such to make inspection unnecessary (*i.e.* where the bracket or support is in essence part of the car body). Paragraph (f) makes clear that FRA reserves the right to disapprove any exclusion proffered by a railroad by providing written notification to the railroad of any such decision.

Paragraphs (g) through (j) contain the proposed inspection and repair criteria for any equipment identified with a welded safety appliance or welded safety appliance bracket or support. These proposed requirements contain provisions concerning when visual inspections of the involved safety appliances would be required to be performed and address the qualifications of the individuals required to perform the inspections as well as the procedures to be utilized when performing the inspections. FRA considered various methods for inspecting the welds on the involved equipment including various types of non-destructive testing on smaller numbers of the involved welds. However, FRA believes that periodic visual inspections of all the identified welds is the most effective and cost-efficient method of ensuring the proper condition of the attachments. FRA seeks comments and views of interested parties relating to any portion of the proposed inspection procedures or to any alternative methods of inspecting the welds on exiting passenger equipment.

Proposed paragraph (h) identifies a number of different types of individuals that could be utilized by a railroad to perform the proposed visual inspections. FRA believes that these inspectors must be properly trained and qualified to identify defective weld conditions. Rather than limit a railroad's ability to utilize a number of its available personnel, FRA attempted to list a number of different types of persons that would have the ability to conduct the required visual inspections based on railroad provided training or due to being certified under an existing industry-recognized welding standard. FRA expects that most railroads will utilize a qualified maintenance person (QMP) to conduct the inspections as they are the individuals recognized to conduct most of the other brake and mechanical inspections required under part 238. FRA notes that a QMP would be required to receive at least four hours of training specific to weld defect identification and weld inspection procedures to be deemed qualified to perform the proposed visual inspections. FRA seeks comments from interested parties regarding the following:

- Are there other types of qualified individuals capable of performing the proposed visual inspections?
- Is the proposed training requirement for QMP's sufficient?
- Are the industry standards cited in this portion of the proposal accurate and readily available?

Paragraph (j) contains proposed remedial actions that are required to be utilized in situations where a welded safety appliance or safety appliance bracket or support is found defective or cracked either during the periodic visual inspections or while otherwise in service. Unless the defect or crack is known to be the result of crash damage, the railroad would be required to conduct a failure and engineering analysis to determine the cause of the defective condition. The proposed remedial action provisions would permit a defective, cracked, or broken welded safety appliance or safety appliance bracket or support to be reattached to a vehicle by either mechanical fastening or welding if the defective condition is due to crash damage or improper construction. Any welded repair would be required to be conducted in accordance with APTA's Standard for Passenger Rail Vehicle Structural Repair, SS–C&S–020–03 (September 2003). In instances where the defective condition is due to inadequate design, such as unanticipated stresses or loads during service, FRA proposes to require that the safety appliance be mechanically attached, if possible, and for railroads to develop a plan for submission to FRA detailing a schedule for mechanically fastening the safety appliances of safety appliance brackets or supports on all cars in that series of cars. FRA proposes these strict provisions because where inadequate design causes failure of the safety appliances it is an indication that there is likely a systemic problem for all cars similarly constructed.

Paragraph (k) contains the proposed requirement related to maintaining records of both the inspections and any repairs made to welded safety appliances or welded safety appliance brackets or supports. These records will not only aid FRA's enforcement of the proposed provisions but will also provide invaluable information regarding the longevity and integrity of weld appliances and brackets or supports. The records proposed in this paragraph may be maintained in any format (written, electronic, etc.) but must be made available to FRA upon request.

Section 238.230 Safety Appliances—New Equipment

This section contains proposed requirements related to passenger equipment placed into service after January 1, 2007. This section reiterates FRA's long-standing prohibition on welding of safety appliance brackets or supports. FRA has carefully considered suggestions that would allow unrestricted use of welding to attach safety appliances on new passenger equipment. FRA appreciates that through proper design, careful quality control of welding practice, and selective verification of welds that it should be possible to achieve safety equivalent to or better than use of mechanical fasteners. However, in the past FRA has encountered poor weld quality on intercity passenger equipment safety appliance attachments, and FRA continues to encounter instances of poor welding in other aspects of rail passenger equipment construction. Since determination of weld quality outside of the manufacturing facility is extremely difficult, since FRA will not have routine access to manufacturing facilities to determine proper welding practice, and since the rail passenger industry does not have in place a rigorous quality control program for its suppliers, FRA has not been able to ascertain the conditions that would provide sufficient assurance of safety for equipment that has no service history. Nevertheless, FRA welcomes comments describing processes that are capable of efficient implementation that would provide the requisite confidence.

In an effort to remain realistic and practical, paragraphs (b) and (c) of this section acknowledge that there may be instances where the design of a vehicle makes it impracticable to mechanically attach a safety appliance bracket or

support and necessitates the need to weld the bracket or support. FRA intends to make clear that the flexibility to utilize welding in these applications will be narrowly construed and will only be permitted in instances where a clear nexus between the equipment design and the need to weld a safety appliance bracket or support exists. FRA proposes that a railroad identify any such equipment prior to placing it in service and that it clearly describe the necessity to weld the bracket or support as well as describe the industry standard followed when making such an attachment. Proposed paragraph (c) makes clear that any new equipment containing welded safety appliance brackets or supports would be required to be inspected and handled in accordance with the provisions proposed in § 238.229(g) through (k).

Paragraph (d) of this section contains proposed requirements which would permit the submission of industry-wide safety appliance arrangement standards to FRA for its approval. As discussed in detail in the section D of the Technical Background portion of the preamble, the Railroad Safety Appliance Standards currently contained in 49 CFR part 231 address a very limited number of different types of passenger equipment. The criteria for most of today's new types of passenger car construction are found within 49 CFR 231.18—Cars of special construction. This results from the fact that modern technology in construction of car-building often does not lend itself to ready application of the existing 49 CFR part 231 requirements. Rather, the designer must adapt several different requirements to meet as closely as possible construction of specific safety appliance arrangements in order to obtain compliance. Most passenger cars today are constructed outside the United States, and this has exacerbated the problem of varying interpretations of regulations and resulting safety appliance arrangements. At times, different requirements are applied to cars of similar design where both could have been constructed in the same manner. Substantial resources are spent on a regular basis by all parties concerned in review sessions to determine if a car is in compliance prior to construction; and even when the cars are delivered, problems have arisen.

In attempt to limit these problems, paragraph (d) proposes a process by which the industry may request approval of safety appliance arrangements on new equipment considered to be cars of special construction under 49 CFR part 231. This paragraph would permit the industry to develop standards to address many of the new types of passenger equipment introduced into service. The proposal would require these standards, and supporting documentation to be submitted to FRA for FRA approval pursuant to the special approval process already contained in § 238.21 of the regulation. The proposal makes clear that any approved standard would be enforceable against any person who violates or causes the violation of the approved standards and that the penalty schedule contained in Appendix A to 49 CFR part 231 would be used as guidance in assessing any applicable civil penalty. The goal of this proposal is to develop consistent safety appliance standards for each new type of passenger car not currently identified in the Federal regulations that ensure the construction of suitable safety appliance arrangements in compliance with 49 CFR part 231. FRA believes the proposal will reduce or eliminate reliance upon criteria for cars of special construction, will improve communication of safety appliance requirements to the industry, and will facilitate regulatory compliance where clarification or guidance is necessary.

Section 238.231 Brake System

Paragraph (b) contains proposed language relating to the design of passenger equipment placed in service for the first time on or after September 9, 2002 and contains additional inspection criteria for such equipment if it is not designed to permit visual observation of the brake actuation and release from outside the plane of the equipment. The plain language of existing paragraph (b) requires new equipment to be designed to allow direct observation of the brake actuation and release without fouling the equipment. The preamble to the final rule discusses alternative design approaches using some type of piston travel indicator or piston cylinder pressure indicator on equipment whose design makes it impossible to meet this requirement. *See* 64 FR 25612 (May 12, 1999). FRA's intent was that this piston travel indicator could be a device similar to the definition of ''actuator'' contained in § 238.5 or some sort of piston cylinder pressure indicator. The rule text and related preamble make clear that the actuation and release of the brake (or a direct indication of such) be able to be observed without an inspector going on, under, or between the equipment. FRA does not believe that truck pressure indicators (which provide no information on piston travel or piston cylinder pressure) meet this requirement.

FRA recognizes that the envisioned ''indicators'' discussed in the preamble of the final rule may be ahead of the technological curve for passenger equipment currently being delivered and that which may be delivered in the near future. Thus, FRA noted its willingness to the RSAC and the Task Force to consider alternatives to requiring piston travel indicators on such equipment. The Task Force discussed the issue in detail as a number of railroads were in the process of receiving new equipment, such as bi-level coaches and other low-slung equipment, the design of which does not allow observation of the brake actuation and release of the brake without going on, under, or between the equipment. Several railroads and manufacturers noted that the type of piston travel indicator envisioned by FRA to meet the § 238.231(b) requirement was not currently available and even if it could be developed in the near future it would likely be a maintenance problem and unreliable. Representatives of rail labor also questioned the viability and need for the type of piston travel indicators discussed in the preamble to the final rule. These participants did not believe that any type of mechanical indicator should take the place of direct visual inspection of the brake system components. Consequently, the members of the Task Force believed that the best approach to the issue was to provide additional inspection protocols for new equipment designed in a manner that makes observation of the actuation and release of the brakes impossible from outside the plane of the equipment in lieu of mandating the use of untested and potentially unreliable piston travel indicators. The Task Force submitted this recommendation to the full RSAC which in turn submitted the recommendation to FRA.

FRA and the Task Force believe that the brake system and mechanical components on bi-level and other low-slung passenger equipment can be adequately inspected through the daily brake and mechanical inspections currently required in the Federal regulations; provided, appropriate blue signal protections are established for the personnel required to perform such inspections. These daily inspections permit a visual inspection of a large percentage of the brake and mechanical components and over a period of a few days all portions of the brake system and mechanical components will be visually observed. However, because the necessary design of some new equipment makes the daily inspections

of the equipment more difficult, does not permit visual observation of the brake actuation and release from outside the plane of the vehicle and because no reliable mechanical device is currently available to provide a direct indication of such, FRA agrees with the Task Force and RSAC recommendation that it is necessary to adopt additional inspection protocols for this type of equipment.

The inspection regiment being proposed in paragraph (b) will be applicable to equipment placed in service on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release. The proposed requirements related to this type of equipment are similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. *See* Docket Number FRA–2004–18063. The proposed provisions would require such equipment to be equipped with either piston travel indicators or brake indicators as defined in § 238.5. The equipment would also be required to receive a periodic brake inspection by a QMP at intervals not to exceed five in-service days and the proposed inspection would have to be performed while the equipment is over an inspection pit or on a raised track. In addition, the railroad performing the proposed inspection would be required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. The specific inspection criteria are discussed in more detail in the section-by-section analysis related to § 238.313. FRA believes that these proposed inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual visual observation of the brake actuation and release without fouling the vehicle.

Paragraph (h) contains proposed provisions related to the inspection of locomotive hand or parking brakes as well as proposed provisions addressing the securement of unattended equipment. FRA proposes to modify paragraph (h)(3) to require that the hand or parking brake on other than MU locomotives be inspected no less frequently that every 368 days and that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. Similar provisions were previously contained in 49 CFR part at § 232.10, prior to part 232's revision in January of 2001. However, FRA inadvertently failed to include hand brake inspection provisions in its original issuance of the Passenger Equipment Safety Standards. Therefore, FRA raised the issue with the RSAC and it recommended that provisions regarding the inspection of hand and parking brakes on passenger equipment be added to part 238. FRA agrees with this recommendation. The inspection and testing intervals as well as the stenciling and record keeping requirements proposed in paragraph (b)(3) are consistent with the current industry practices and will impose no additional burden on the industry.

FRA also proposes the addition of a new paragraph (h)(4) that would contain specific requirements related to the securement of unattended equipment. A detailed discussion regarding the development of this proposal is contained in Section E of the Technical Background portion of the preamble. At FRA's suggestion, the Task Force considered issues related to the securement of unattended equipment. FRA noted its concern that existing part 238 failed to adequately address either the inspection of hand or parking brakes or the issues related to the securement of unattended equipment. FRA believes that the rational for addressing these issues on freight operations is equally applicable to passenger operations. The preamble to the final rule related to 49 CFR part 232 contains an in-depth discussion of the need to address these issues. *See* 66 FR 4156–58 (January 17, 2001). The approach proposed in this proceeding is also consistent with the guidance contained in FRA Safety Advisory 97–1. *See* 62 FR 49046 (September 15, 1997). The requirements proposed in this paragraph are consistent with and based directly on current passenger industry practice. Thus, in FRA's view, the proposed provisions will have no economic or operational impact on passenger operations but will ensure that these best practices currently adopted by the industry are followed and complied with by making them part of the Federal regulations.

Paragraph (h)(4) contains proposed provisions that would require that unattended equipment be secured by applying a sufficient number of hand or parking brakes to hold the equipment and would require railroads to develop and implement a process or procedure to verify that the applied hand or parking brakes will hold the equipment. The proposal would also prohibit a practice known as ''bottling the air'' in a standing cut of cars. A full discussion of the hazards related to this practice is contained in the preamble of the final rule related to freight power brakes. *See* 66 FR 4156–57. Virtually all railroads prohibit this practice in their operating rules, thus FRA does not believe any burden is being imposed on the railroads by including it in this proposal.

Paragraph (h)(4) also contains proposed provisions to require a minimum number of hand or parking brakes that must be applied on an unattended locomotive consist or train. Due to the relatively short length and low tonnage associated with passenger trains, FRA does not believe that the more stringent provisions contained in § 232.103(n)(3) are necessary in a passenger train context. Thus, this paragraph proposes to require that at least one hand or parking brake be fully applied on an unattended passenger locomotive consist or passenger train; however, the number of applied hand or parking brakes will vary depending on the process or procedures developed and implemented by each covered railroad.

Members of the Task Force sought clarification as to the meaning of the term ''fully applied'' as it relates to certain passenger equipment equipped with parking brakes. With the introduction of the spring applied parking brake, the parking brake can be ''conditioned to apply'' but may not be fully applied. Many spring applied parking brake arrangements usually incorporate an anti-compounding feature so the service brake application and parking brake application are not simultaneously applied. This arrangement is utilized to limit the thermal input that may occur if the forces from the service brake application and parking brake application are applied simultaneously. When the train is left unattended, the operator would ''condition'' the parking brake for application through a cab switch push button or by simply deactivating the cab through normal shutdown procedures. The brake equipment is either placed in an emergency brake condition or the brake pipe is vented to zero pressure at a service reduction rate. This brake equipment operation would result in brake cylinder pressure being applied to the brake units. The brake cylinder pressure provides sufficient force to create an equivalent force to that of the parking brake. If the equipment is not left on a source of compressed air, the brake cylinder pressure may be slowly depleted. When the brake cylinder pressure is gradually reduced, the parking brake gradually applies so that below a prescribed brake cylinder pressure, the parking brake is fully applied. In light of the preceding

discussion, FRA intends to make clear that a spring applied parking brake will be considered ''fully applied'' under paragraph (h)(4) if all steps have been take to permit its full application (*i.e.*, ''conditioned to apply'').

In addition, paragraph (h)(4) contains proposed provisions requiring railroads to develop and implement procedures for securing locomotives not equipped with a hand or parking brake and develop, implement, and adopt instructions for securing any locomotive left unattended. As noted previously, FRA is not aware of any railroad which does not already have the proposed procedures or processes in place. Thus, FRA believes that these requirements proposed in paragraph (h)(4) will impose no burden on passenger operations covered by 49 CFR part 238.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

Paragraph (e)(17) contains proposed provisions requiring that air compressors, on passenger equipment so equipped, be in effective and operative condition. The proposed provision also provides flexibility to permit certain equipment found with ineffective or inoperative air compressors at its exterior calendar day mechanical inspection to continue in service until its next such inspection if various conditions are met by the railroad. A full discussion regarding the development of these proposed provisions is contained in Section A of the Technical Background portion of the preamble.

MU passenger locomotives are generally operated as married pairs but in some cases they can be operated as single or triple units. In the case of the married pairs, each pair of MU locomotives share a single air compressor. When operated in triple units, the three MU locomotives generally share two air compressors and single-unit MU locomotives are equipped with their own air compressor. The amount of air required to be produced by the air compressors is based on the size of the brake pipe and the brake cylinder reservoirs, the size of which are based on the calculated number of brake application and release cycles the train will encounter. In addition, the compressed air produced by the air compressors is shared within the consist by utilizing a main reservoir equalizing pipe or, in single pipe systems, through the brake pipe which is then diverted to the brake cylinder supply reservoir and other air operated devices by use of a governor arrangement. Therefore, a passenger train set consisting of numerous MU locomotives will have multiple air compressors providing the train consist with the necessary compressed air. FRA agrees with the determinations of the Task Force and the full RSAC that a loss of compressed air from a limited number of air compressors in such a train will not adversely effect the operation of the train's brakes or other air-operated components on the train.

Paragraph (e)(17) proposes to permit the continued operation of MU train sets with a limited number of inoperative or ineffective air compressors to continue to be used in passenger service until the next exterior calendar day mechanical inspection when found at such an inspection. This paragraph would require a railroad to determine through data, analysis, or actual testing the maximum number of inoperative or ineffective air compressors that could be in an MU train set without compromising the integrity or safety of the train set based on the size and type of train and the train's operating profile. The railroad would be required to submit the maximum number of air compressors permitted to be inoperative or ineffective on its various trains to FRA before it could begin operation under the proposed provision and would be required to retain and make available to FRA any data or analysis relied on to make those determinations.

Proposed paragraph (e)(17) would also require a qualified maintenance person (QMP) to verify the safety and integrity of any train operating with inoperative or ineffective air compressors before the equipment continues in passenger service. In addition, the proposal requires notification to the train crew of any inoperative or ineffective air compressors and requires that a record be maintained of the defective condition. FRA notes that the proposal provides FRA with the authority to revoke a railroad's ability to utilize the flexibility proposed in this paragraph if the railroad fails to comply with the maximum limits established for continued operation of inoperative air compressors or the maximum limits are not supported by credible and accurate data. FRA believes that the provisions proposed in this paragraph will ensure the safety of passenger operations while providing the railroads additional flexibility in handling defective or inoperative equipment.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

Proposed paragraphs (c)(13) and (d) contain requirements related to the periodic inspection of hand or parking brakes on passenger cars and other unpowered vehicles. As noted previously, FRA inadvertently failed to include any hand brake inspection provisions in its original issuance of the Passenger Equipment Safety Standards. Thus, FRA raised the issue with the RSAC and the Task Force and they recommended inclusion of various provisions regarding the inspection of hand and parking brakes on passenger equipment in this proposal. FRA agrees with this recommendation. Paragraph (c)(13) proposes to require that the hand or parking brake on passenger cars and unpowered vehicles used in passenger trains be applied and released at each periodic mechanical inspection. No record of this inspection would need to be prepared or retained. Based on information provided at the Task Force and Working Group meetings, all passenger operations currently conduct the proposed inspection of the hand and parking brakes at each periodic mechanical inspection. Paragraph (d) is modified and proposes to require a complete inspection of the hand or parking brake as well as their parts and connections on passenger cars and unpowered vehicles no less frequently than every 368 days. Paragraph (d) also proposes to require that a record (either stencil, blue card, or electronic) be maintained and provided to FRA upon request. The inspection and testing intervals as well as the stenciling and record keeping requirements proposed in this paragraph are consistent with the current practices in the industry and will impose no additional burden on the industry.

Section 238.313 Class I Brake Tests

Paragraph (g)(3) contains a proposed conforming change to make this paragraph consistent with the definition changes being proposed in § 238.5 relating to the terms ''actuator'' and ''piston travel indicator.'' In order to prevent and limit any confusion on the part of the regulated community, FRA agrees with the RSAC's recommendation to modify the definition of ''actuator'' to describe the brake system component to which the term has traditionally been attached and which is what the term refers to in the definition of ''piston travel.'' In addition, FRA accepts the RSAC's recommendation to add a new term to

part 238 to describe the device originally defined as an ''actuator.'' Therefore, FRA is proposing to add the term ''piston travel indicator'' to describe a device directly activated by the movement of the brake cylinder piston, the disc actuator, or the tread brake unit cylinder piston that provides an indication of piston travel. In paragraph (g)(3) of this section, FRA is replacing the term ''actuator'' with the term ''piston travel indicator'' in order to add clarity to the regulatory provision.

Paragraph (j) contains the proposed requirements related to the periodic inspection of passenger equipment placed in service for the first time on or after September 9, 2002, the design of which does not permit actual visual observation of the brake actuation and release as required in § 238.231(b). A detailed discussion related to the development and need for these proposed provisions is contained in section C of the Technical Background portion of the preamble and in the section-by-section analysis related to paragraph (b) of § 238.231. As previously noted, the periodic inspection requirements proposed in this paragraph are similar to those contained in a FRA Safety Board letter dated October 19, 2004, granting that portion of the Massachusetts Bay Transportation Authority's (MBTA) waiver petition seeking relief from the requirements of § 238.231(b) for 28 Kawasaki bi-level coaches. *See* Docket Number FRA–2004–18063.

Proposed paragraph (j) makes clear that the periodic inspection provisions for the identified types of equipment are in addition to all of the other inspection provisions contained in paragraphs (a) through (i) of this section and must be performed by a QMP. The proposed provisions would require equipment not meeting the design requirements contained in § 238.231(b)(1) to receive a periodic brake inspection at intervals not to exceed five in-service days and the proposed inspection would have to be performed while the equipment is over an inspection pit or on a raised track. Any day or portion of a day that a piece of passenger equipment is actually used in passenger service would constitute an ''in-service day.'' FRA agrees with the recommendations of the RSAC and Task Force that five in-service days is appropriate and would permit the proposed inspection to be performed during weekends or on other days when the equipment is not being used. Thus, the operational and economic impact of the proposed inspection requirement is significantly minimized. The periodic inspection would include all of the items and components identified in paragraphs (g)(1) through (g)(15) of this section. In addition, the railroad performing the proposed inspection would be required to maintain a record of the inspection consistent with the existing record requirements related to Class I brake tests. FRA believes that these proposed inspection requirements will ensure the safety and proper operation of the brake system on equipment which does not permit actual visual observation of the brake actuation and release without fouling the vehicle.

Section 238.321 Out-of-Service Credit

As discussed previously, FRA did not seek consensus in the RSAC process for the proposed provision related to out-of service credit contained in this section. This issue is being addressed on FRA's own motion in this proceeding in response to APTA's petition for rulemaking dated March 28, 2005. Thus, the Working Group did not reach consensus on the proposed provision related to this issue and no recommendation was provided to or comment sought from the full RSAC.

The proposed provision contained in this section is modeled directly on the ''out-of-use credit'' provision contained in the Locomotive Safety Standards at 49 CFR 229.33. The locomotive out-of-use credit has been effectively and safely utilized by the railroad industry for decades. As passenger equipment is generally captive service equipment, is generally less mechanically complex than locomotives, and because the provisions for which the proposed credit will be utilized are time-based, FRA believes it is appropriate to permit passenger and commuter operations to receive credit for extended periods of time when equipment is not being used. The proposed provision will permit railroads to extend the dates for conducting periodic mechanical inspections and periodic brake maintenance required by §§ 238.307 and 238.309 for equipment that is out of service for periods of at least 30 days. The proposal will require railroads to maintain records of any out of service days on the records related to the periodic attention. FRA does not see a safety concern with permitting this flexibility. In fact, the regulation already provides assurances that the brake systems on all passenger cars and unpowered vehicles are in proper condition after being out of service for 30 days or more by requiring that a single car test pursuant to § 238.311 is performed on the vehicle before being placed back in service. See 49 CFR 238.311(e)(1). FRA seeks comment and information from all interested parties regarding any safety or operating concerns related to this proposed provision.

VI. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket two regulatory evaluations addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2005–23080. FRA invites comments on these regulatory evaluations.

FRA conducted two separate regulatory evaluations addressing the economic impact of this proposed rule. One regulatory evaluation addresses the economic impact of the proposed provisions related to the safety appliance arrangements on passenger equipment. The other analysis addresses the economic impact of all of the other proposed provisions contained in this NPRM. As FRA developed the proposed requirements related to safety appliance arrangements on passenger equipment unilaterally, FRA believes it is appropriate to provide a separate regulatory analysis regarding the economic impact of those proposed provisions. As the analyses indicate, this proposed rule provides an overall economic savings to the industry due to the flexibility provided for in many of the proposed provisions and because many of the proposed requirements incorporate existing industry practice or provide an alternative means of compliance to what is presently mandated.

The following table presents the estimated twenty-year monetary impacts associated with the proposed provisions contained in this NPRM. The table

contains the estimated costs and benefits associated with this NPRM and provides the total 20-year value as well as the 20-year net present value (NPV) for each indicated item. The dollar amounts presented in this table have been rounded to the nearest thousand. For exact estimates, interested parties should consult the Regulatory Impact Analysis (RIA) that has been made part of the docket in this proceeding.

Description	20-year total ($)	20-year NPV ($)
Costs:		
Periodic Brake Inspection of Low-Slung Equipment	4,350,000	1,957,000
Periodic Inspection of Welded Safety Appliances	3,831,000	2,335,000
Air Compressor Records	250,000	132,000
Total Costs	8,381,000	4,424,000
Benefits:		
Pneumatic Testing of Main Reservoirs	5,940,000	3,147,000
Avoided Cost of Piston Travel Indicators	2,550,000	1,275,000
Air Compressor—Equipment Utilization	17,000,000	9,005,000
Avoided Cost of Safety Appliance Retrofit	9,000,000	8,370,000
Out-of-Service Credit—Equipment Utilization	1,020,000	542,000
Total Benefits	35,510,000	22,339,000

The economic benefits to the industry related to this proposed rule outweigh the economic costs by a ratio in excess of 4 to 1. FRA did not quantify the safety benefits for most of the provisions contained in this proposal as many of the proposed provisions are based on improved manufacturing techniques, equipment reliability, or are the result of additional regulatory flexibility. However, with regard to the proposed provision related to the attachment of safety appliances on passenger equipment, FRA did consider the potential safety benefits related to the proposal. In addition to the potential avoided cost of retrofitting equipment containing welded safety appliances or welded safety appliance brackets or supports estimated at $9 million, FRA also believes there are potential safety benefits to be derived from the reduced risk of weld failure resulting from the proposed inspection protocols of welded safety appliance attachments. The RIA notes two accidents that were the result of failed safety appliances and although FRA's database did not contain these accidents, there is no reason to believe that safety appliances in passenger operations are immune from failure. The lack of an accident record may be due to low risks involved in passenger operations, but also weld failure accidents are not generally reported in FRA systems that are geared more for accidents that stop rail operations. The FRA believes that reducing the risk of weld failures would benefit passenger operations. FRA notes that if just 2 or 3 critical accidents are avoided over the 20-year period cover by the RIA, the proposal would be cost-justified by the safety benefits alone.

FRA further notes that it did not estimate a cost for the proposed provisions related to the securement of unattended equipment and the inspection of hand or parking brakes. The proposed provisions related to these issues are merely an incorporation of current industry practice. FRA is not aware of any passenger or commuter railroad that does not already conduct the proposed inspections, maintain the proposed records, and have the proposed procedures in place. FRA seeks comments and input from all interested parties regarding the estimates contained in the RIAs developed in connection with this NPRM.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this proposal. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2005–23080.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. *See* 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad, shipper, or contractor is a small entity. FRA uses this alternative definition of ''small entity'' for this rulemaking.

The AISE developed in connection with this NPRM concludes that this proposal would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act or Executive Order 13272.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per reponse	Total annual burden hours	Total annual burden cost
216.14—Special notice for repairs—passenger equipment.	22 railroads	9 forms	5 minutes	1 hour	$38
229.47—Emergency Brake Valve—Marking Brake Pipe Valve as such.	22 railroads	5 markings	1 minute	.08 hour	3
—DMU, MU, Control Cab Locomotives—Marking Emergency Brake Valve as such.	22 railroads	5 markings	1 minute	.08 hour	3
238.7—Waivers	22 railroads	9 waivers	2 hours/25 hrs	64 hours	2,432
238.15—Movement of passenger equipment with power brake defects, and.	22 railroads	1,000 cards/tags	3 minutes	50 hours	2,350
—Movement of passenger equpment that becomes defective en route.	22 railroads	288 cards/tags	3 minutes	14 hours	658
Conditional requirement—Notifications	22 railroads	144 notices	3 minutes	7 hours	329
238.17—Limitations on movement of passenger equipment containing defects found at calendar day inspection and on movement of passenger equipment that develops defects en route.	22 railroads	200 cards/tags	3 minutes	10 hours	330
—Special requisites for movement of passenger equipment with safety appliance defects.	22 railroads	76 tags	3 minutes	4 hours	132
—Crew member notification	22 railroads	38 notifications	30 seconds	32 hour	11
238.21—Petitions for special approval of alternative standards.	22 railroads	1 petition	16 hours	16 hours	608
—Petitions for special approval of alternative compliance.	22 railroads	1 petition	120 hours	120 hours	4,560
—Petitions for special approval of pre-revenue service acceptance testing plan.	22 railroads	2 petitions	40 hours	80 hours	3,040
—Comments on petitions	Public/RR Industry.	4 comments	1 hour	4 hours	256
238.103—Fire Safety:					
—Procuring new passenger equipment	5 equipment manuf.	4 equip. designs	540 hours	2,160 hours	128,000
—Subsequent orders	5 equipment manuf.	4 equip. designs	60 hours	240 hours	43,200
—Existing equipment—fire safety analysis	5 manuf./22 railroads.	10 analyses	30 hours	300 hours	36,000
—Transferring passenger cars/locomotives	22 railroads/AAR	1 analysis	20 hours	20 hours	2,400
238.107—Inspection/testing/maintenance plans—Review by railroads.	22 railroads	7 reviews	60 hours	420 hours	15,960
238.109—Employee/contractor training	22 railroads	2 notifications	15 minutes	1 hour	38
—Training employees: Mechanical Insp	7,500 employees	2,500 indiv/100 trainers.	1.33 hours	3,458 hours	114,114
238.109—Recordkeeping	22 railroads	2,500 records	3 minutes	125 hours	4,750
238.111—Pre-revenue service acceptance testing plan: Passenger equipment that has previously been used in service in the U.S.	9 equipment manuf.	2 plans	16 hours	32 hours	2,208
—Passenger equipment that has not been previously used in revenue service in the U.S.	9 equipment manuf.	2 plans	192 hours	384 hours	38,400
—Subsequent Order	9 equipment manuf.	2 plans	60 hours	120 hours	9,520
238.229—Safety Appliances (New Rqmnts):					
—Welded safety appliances considered defective: lists.	22 railroads	22 lists	1 hour	22 hours	836
—Inspection plans	22 railroads	22 plans	16 hours	352 hours	17,952
—Remedial action: Defect/crack in weld—record.	22 railroads	1 record	2.25 hours	2 hours	66
—Petitions for special approval of alternative compliance when design of equipment makes it impractical to mechanically fasten safety appliance/safety appliance bracket/support to equipment.	22 railroads	15 petitions	4 hours	60 hours	7,200
—Records of inspection/repair of welded safety appliance brackets/supports.	22 railroads	3,044 records	4.5 hours/12 minutes.	798 hours	27,324
238.230—Safety Appliances—New Equipment (New Requirement):					

CFR section	Respondent universe	Total annual responses	Average time per reponse	Total annual burden hours	Total annual burden cost
—Welded safety appliances: Documentation for equipment impractically designed to mechanically fasten safety appliance support.	22 railroads	15 documents	4 hours	60 hours	2,280
238.231—Brake System (New Requirement):					
—Inspection and repair of hand/parking brake: Records.	22 railroads	2,500 forms	21 minutes	875 hours	28,875
238.237—Automated monitoring:					
—Documentation for alerter/deadman control timing.	22 railroads	3 documents	2 hours	6 hours	228
—Defective alerter/deadman control: Tagging	22 railroads	25 tags	3 minutes	1 hour	47
238.303—Exterior calendar day mechanical inspection of passenger equipment: Notice of previous inspection.	22 railroads	25 notices	1 minute	1 hour	47
—Dynamic brakes not in operating mode: Tag	22 railroads	50 tags/cards	3 minutes	3 hours	141
—Conventional locomotives equipped with inoperative dynamic brakes: Tagging (New Requirements).	22 railroads	50 tags/cards	3 minutes	3 hours	141
—MU passenger equipment found with inoperative/ineffective air compressors at exterior calendar day inspection: Documents.	22 railroads	6 documents	2 hours	12 hours	768
—Written notice to train crew about inoperative/ineffective air compressors.	22 railroads	100 messages or notices.	3 minutes	5 hours	165
—Records of inoperative air compressors	22 railroads	100 records	2 minutes	3 hours	99
—Record of exterior calendar day mechanical inspection (Old Requirement).	22 railroads	2,376,920 records.	10 minutes + 1 minute.	435,769 hours	14,578,452
238.305—Interior calendar day mechanical inspection of passenger cars:					
—Tagging of defective end/side doors	22 railroads	540 tags	1 minute	9 hours	297
—Records of interior calendar day inspection	22 railroads	1,968,980 records.	5 minutes + 1 minute.	196,898 hours	6,661,714
238.307—Periodic mechanical inspection of passenger cars and unpowered vehicles:					
—Alternative inspection intervals: Notice	22 railroads	2 notifications	5 hours	10 hours	380
—Notice of seats/seat attachments broken or loose.	22 railroads	200 notices	2 minutes	7 hours	266
—Records of each periodic mechanical inspection.	22 railroads	19,284 records	200 hrs. + 2 minutes.	3,857,443 hours	71,516
—Detailed documentation of reliability assessments as basis for alternative inspection interval.	22 railroads	5 documents	100 hours	5 hours	19,000
238.311—Single car test:					
—Tagging to indicate need for single car test	22 railroads	25 tags	3 minutes	1 hour	33
238.313—Class I brake test:					
—Record for additional inspection for passenger equipment that does not comply with § 238.231(b)(1) (New Requirement).	22 railroads	15,600 records	30 minutes	7,800 hours	257,400
238.315—Class IA brake test:					
—Notice to train crew that test has been performed.	22 railroads	18,250 verbal notices.	5 seconds	25 hours	825
—Communicating signal: Tested and two-way radio system.	22 railroads	365,000 tests	15 seconds	1,521 hours	57,798
238.317—Class II brake test:					
—Communicating signal: Tested and two-way radio system.	22 railroads	365,000 tests	15 seconds	1,521 hours	57,798
238.321—Out-of-service credit (New Requirement):					
—Passenger Car: Out-of-use notation	22 railroads	1,250 notations	2 minutes	42 hours	1,386
238.445—Automated monitoring:					
—Performance monitoring: Alerters/alarms	1 railroad	10,000 alerts	10 seconds	28 hours	0
—Monitoring system: Self-test feature: Notifications.	1 railroad	21,900 notifications.	20 seconds	122 hours	0
238.503—Inspection, testing, and maintenance requirements:					
238.505—Program approval procedures:					
—Submission of program	1 railroad	1 program	1,200 hours	1,200 hours	76,800
—Comments on programs	Rail Industry	3 comments	3 hours	9 hours	342

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of

the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this NPRM between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Federalism Implications

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. See 64 FR 43255. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This proposed rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of this proposed rule to FRA, has as permanent members two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this proposed rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this proposed rule has no federalism implications, other than the preemption of state laws covering the subject matter of this proposed rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

Elements of the proposed rule dealing with safety appliances affect an area of safety that has been pervasively regulated at the Federal level for over a century. Accordingly, the proposed amendments will involve no impacts on Federal relationships.

Environmental Impact

FRA has evaluated this proposed regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined 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. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely

to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 229

Locomotives, Main reservoirs, Penalties, Railroads, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety appliances.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 229 and 238 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

2. Section 229.5 is amended by revising the definition of ''MU locomotive'' to read as follows:

§ 229.5 Definitions.

* * * * *

MU locomotive means a multiple unit operated electric locomotive—

(1) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(2) Without propelling motors but with one or more control stands and a means of picking-up primary power such as a pantograph or third rail.

* * * * *

3. Section 229.31 is amended by revising paragraphs (a) and (c) to read as follows:

§ 229.31 Main reservoir tests.

(a) Before it is placed in service, each main reservoir other than an aluminum reservoir shall be subjected to a pneumatic or hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, block eighteen. Except as provided in paragraph (c) of this section, at intervals that do not exceed 736 calendar days, each main reservoir other than an aluminum reservoir shall be subjected to a hydrostatic pressure of at least 25 percent more than the maximum working pressure fixed by the chief mechanical officer. The test date, place, and pressure shall be recorded on Form FRA F 6180–49A, and the person performing the test and that person's supervisor shall sign the form.

* * * * *

(c) Each welded main reservoir originally constructed to withstand at least five times the maximum working pressure fixed by the chief mechanical officer may be drilled over its entire surface with telltale holes that are three-sixteenths of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the formula—

$$D = (.6PR/S - 0.6P)$$

Where:

D = Extreme depth of telltale holes in inches but in no case less than one-sixteenth inch;

P = Certified working pressure in pounds per square inch;

S = One-fifth of the minimum specified tensile strength of the material in pounds per square inch; and

R = Inside radius of the reservoir in inches.

One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. A reservoir so drilled does not have to meet the requirements of paragraphs (a) and (b) of this section, except the requirement for a pneumatic or hydrostatic test before it is placed in use. Whenever any such telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service. A reservoir now in use may be drilled in lieu of the tests provided for by paragraphs (a) and (b) of this section, but shall receive a hydrostatic test before it is returned to use or may receive a pneumatic test if conducted by the manufacturer in an appropriately safe environment.

* * * * *

4. Section 229.47 is amended by revising paragraph (b) to read as follows:

§ 229.47 Emergency brake valve.

* * * * *

(b) DMU, MU, and control cab locomotives operated in road service shall be equipped with an emergency brake valve that is accessible to another crew member in the passenger compartment or vestibule. The words ''Emergency Brake Valve'' shall be legibly stenciled or marked near each valve or shall be shown on an adjacent badge plate.

5. Section 229.137 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 229.137 Sanitation, general requirements.

* * * * *

(b) * * *

(1) * * *

(vi) Except as provided in § 229.14 of this part, DMU, MU, and control cab locomotives designed for passenger occupancy and used in intercity push-pull service that are not equipped with sanitation facilities, where employees have ready access to railroad-provided sanitation in other passenger cars on the train at frequent intervals during the course of their work shift.

* * * * *

PART 238—[AMENDED]

6. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

7. Section 238.5 is amended by revising the definition of ''actuator'' and adding a definition of ''piston travel indicator'' to read as follows:

§ 238.5 Definitions.

* * * * *

Actuator means a self-contained brake system component that generates the force to apply the brake shoe or brake pad to the wheel or disc. An actuator typically consists of a cylinder, piston, and piston rod.

* * * * *

Piston Travel Indicator means a device directly activated by the movement of the brake cylinder piston, the disc brake actuator, or the tread brake unit cylinder piston that provides an indication of the piston travel.

* * * * *

8. Section 238.17 is amended by revising paragraph (b) introductory text to read as follows:

§ 238.17 Movement of passenger equipment with other than power brake defects.

* * * * *

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection:* Except as provided in §§ 238.303(e)(15) and (e)(17), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied:

* * * * *

9. Section 238.21 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 238.21 Special approval procedures.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §§ 238.103, 238.223, 238.229, 238.309, 238.311, 238.405, or 238.427; for approval of alternative compliance under §§ 238.201, 238.229, or 238.230; and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by § 238.505.)

* * * * *

(c) * * *

(2) The elements prescribed in §§ 238.201(b), 238.229(j)(2), and 238.230(d); and

* * * * *

10. Section 238.229 is revised to read as follows:

§ 238.229 Safety appliances—general.

(a) Except as provided in this part, all passenger equipment continues to be subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in Federal regulations at part 231 of this chapter.

(b) Except as provided in this part, FRA interprets the provisions in part 231 of this chapter that expressly mandate that the manner of application of a safety appliance be a bolt, rivet, or screw to mean that the safety appliance and any related bracket or support used to attach that safety appliance to the equipment shall be so affixed to the equipment. Specifically, FRA prohibits the use of welding as a method of attachment of any such safety appliance or related bracket or support. For purposes of this section and part 231 of this chapter, a ''safety appliance bracket or support'' means a component or part attached to the equipment for the sole purpose of securing or attaching of the safety appliance. FRA does allow the welded attachment of a brace or stiffener used in connection with a mechanically fastened safety appliance. In order to be considered a ''brace'' or ''stiffener,'' the component or part shall not be necessary for the attachment of the safety appliance to the equipment and is used solely to provide extra strength or steadiness to the safety appliance.

(c) *Welded Safety Appliances.* (1) Passenger equipment placed in service prior to January 1, 2007, that is equipped with a safety appliance, required by the ''manner of application'' provisions in part 231 of this chapter to be attached by a mechanical fastener (*i.e.*, bolts, rivets, or screws), and the safety appliance is mechanically fastened to a bracket or support that is attached to the equipment by welding may continue to be used in service provided all of the requirements in paragraphs (e) through (k) of this section are met.

(2) Passenger equipment that is equipped with a safety appliance that is directly attached to the equipment by welding (*i.e.*, no mechanical fastening of any kind) shall be considered defective and immediately handled for repair pursuant to the requirements contained in § 238.17(e) unless the railroad meets the following:

(i) The railroad submits a written list to FRA that identifies each piece of passenger equipment equipped with a welded safety appliance as described in paragraph (c)(2) of this section and provides a description of the specific safety appliance;

(ii) For passenger equipment placed in service for the first time on or after January 1, 2007, the railroad provides a detailed basis as to why the design of the vehicle or placement of the safety appliance requires that the safety appliance be directly welded to the equipment; and

(iii) The involved safety appliance(s) on such equipment are inspected and handled pursuant to the requirements contained in paragraphs (g) through (k) of this section.

(d) *General.* Passenger equipment with a welded safety appliance or a welded safety appliance bracket or support will be considered defective and shall be handled in accordance with § 238.17(e) if any part or portion of the weld is defective or contains a crack. Any repairs made to such equipment shall be in accordance with the inspection plan required in paragraph (g) of this section and the remedial actions identified in paragraph (j) of this section. A defect for the purposes of this section means any anomaly, regardless of size, that affects the designed strength of the weld. A crack for purposes of this section means a fracture of any visibly discernible length or width.

(e) *Identification of equipment.* The railroad shall submit a written list to FRA that identifies each piece of passenger equipment equipped with a welded safety appliance bracket or support by January 1, 2007. Passenger equipment placed in service prior to January 1, 2007, but not discovered until after January 1, 2007, shall be immediately added to the railroad's written list and shall be immediately inspected in accordance with paragraph (g) through (k) of this section. The written list submitted by the railroad shall contain the following:

(1) The equipment number;

(2) The equipment type;

(3) The safety appliance bracket(s) or support(s) affected;

(4) Any equipment and any specific safety appliance bracket(s) or supports(s) on the equipment that will not be subject to the inspection plan required in paragraph (g) of this section;

(5) A detailed explanation for any such exclusion recommended in paragraph (e)(4) of this section;

(f) FRA's Associate Administrator for Safety reserves the right to disapprove any exclusion recommended by the railroad in paragraphs (c)(2)(i) and (d)(4) of this section and will provide written notification to the railroad of any such determination.

(g) *Inspection Plans.* The railroad shall adopt and comply with and submit to FRA a written safety appliance inspection plan. At a minimum, the plan shall include the following:

(1) An initial visual inspection (within 1 year of date of publication) and periodic re-inspections (at intervals not to exceed 6 years) of each welded safety appliance bracket or support identified in paragraph (e) of this section. If significant disassembly of a car is necessary to visually inspect the involved safety appliance bracket or support, the initial visual inspection may be conducted at the equipment's first periodic brake equipment maintenance interval pursuant to § 238.309 occurring after January 1, 2006.

(2) Identify the personnel that will conduct the initial and periodic inspections and any training those individuals are required to receive in

accordance with the criteria contained in paragraph (h) of this section.

(3) Identify the specific procedures and criteria for conducting the initial and periodic safety appliance inspections in accordance with the requirements and criteria contained in paragraph (i) of this section. This may include the adoption and compliance with any date specific industry accepted and developed procedure and criteria.

(4) Identify when and what type of potential repairs or potential remedial action will be required for any defective welded safety appliance bracket or support discovered during the initial or periodic safety appliance inspection in accordance with paragraph (j) of this section.

(5) Identify the records that will be maintained that are related to the initial and periodic safety appliance inspections in accordance with the requirements contained in paragraph (k) of this section.

(h) *Inspection Personnel.* The initial and periodic safety appliance inspections shall be performed by individuals properly trained and qualified to identify defective weld conditions. At a minimum, these personnel include the following:

(1) A qualified maintenance person (QMP) with at least 4 hours of training specific to the identification of weld defects and the railroad's weld inspection procedures;

(2) A current certified welding inspector (CWI) pursuant to American Welding Society Standard—AWS QC–1, Standard for AWS Certification of Welding Inspectors (1996);

(3) A person possessing a current Canadian Welding Bureau (CWB) certification pursuant to the Canadian Standards Association Standard W59 (2003); or

(4) A person possessing a current level II or level III visual inspector certification from the American Society for Non-destructive Testing pursuant to Recommended Practice SNT–TC–1A—Personnel Qualification and Certification in Nondestructive Testing (2001).

(i) *Inspection Procedures.* The initial and periodic safety appliance inspections shall be conducted in accordance with the procedures and criteria established in the railroad's inspection plan. At a minimum these procedures and criteria shall include:

(1) A complete visual inspection of the entire welded surface of any safety appliance bracket or support identified in paragraph (e) of this section.

(2) The visual inspection shall occur after the complete removal of any dirt, grease, rust, or any other foreign matter from the welded portion of the involved safety appliance bracket or support. Removal of paint is not required.

(3) The railroad shall disassemble any equipment necessary to permit full visual inspection of the involved weld.

(4) Any materials necessary to conduct a complete inspection must be made available to the inspection personnel throughout the inspection process. These include but are not limited to such items as mirrors, magnifying glasses, or other location specific inspection aids. Remote viewing aids possessing equivalent sensitivity are permissible for restricted areas.

(5) Any weld found with a potential defect or crack as defined in paragraph (d) of this section during the initial or periodic safety appliance inspection shall be inspected by either a certified weld inspector identified in paragraph (h)(2) and (h)(3) of this section, a certified level II or III inspector identified in paragraph (h)(4) of this section, or a welding or materials engineer possessing a professional engineer's license for a final determination. No car with a potential defect or crack in the weld of a safety appliance or its attachment may continue in use until a final determination as to the existence of a defect or crack is made by the personnel identified in this paragraph.

(6) A weld finally determined to contain a defect or crack shall be handled for repair in accordance with § 238.17(e) and repaired in accordance with the remedial action criteria contained in paragraph (j) of this section.

(j) *Remedial Action.* Unless a defect or crack in a weld is known to have been caused by crash damage, the railroad shall conduct a failure and engineering analysis of any weld identified in paragraph (e) of this section determined to have a break or crack either during the initial or periodic safety appliance inspection or while otherwise in service to determine if the break or crack is the result of crash damage, improper construction, or inadequate design. Based on the results of the analysis, the repair of the involved safety appliance bracket or support shall be handled as follows:

(1) A defect or crack in a weld due to crash damage (*i.e.*, impact of the safety appliance by an outside force during service or an accident) or improper construction (*i.e.*, the weld did not conform to the engineered design) shall be reattached by either mechanically fastening the safety appliance or the safety appliance bracket or support to the equipment, or welding the safety appliance bracket or support to the equipment in a manner that is at least as strong as the original design or at least twice the strength of a bolted mechanical attachment, whichever is greater. If welding is used to repair the damaged appliance, bracket, or support, the following requirements shall be met:

(i) The repair shall be conducted in accordance with the welding procedures contained in APTA Standard SS–C&S–020–03—Standard for Passenger Rail Vehicle Structural Repair (September 2003);

(ii) A qualified individual under paragraph (h) of this section shall inspect the weld to ensure it is free of any cracks prior to the equipment being placed in-service;

(iii) The welded safety appliance bracket or support shall receive a periodic safety appliance inspection pursuant to the requirements contained in paragraphs (g) through (i) of this section; and

(iv) A record of the welded repair pursuant to the requirements of paragraph (k) of this section shall be maintained by the railroad.

(2) A defect or crack in the weld that is due to inadequate design (*i.e.*, unanticipated stresses or loads during service) shall be handled in accordance with the following:

(i) The railroad must immediately notify FRA's Associate Administrator for Safety in writing of its discovery of a cracked or defective weld that is due to inadequate design;

(ii) The involved safety appliance or the safety appliance bracket or support shall be reattached to the equipment by mechanically fastening the safety appliance or the safety appliance bracket or support to the equipment unless such mechanical fastening is impractical due to the design of the equipment;

(iii) The railroad shall develop and comply with a written plan submitted to and approved by FRA's Associate Administrator for Safety detailing a schedule for all passenger equipment in that series of cars with a similar welded safety appliance bracket or support to have the involved safety appliance or the safety appliance bracket or support mechanically fastened to the equipment; and

(iv) If a railroad determines that the design of the equipment makes it impractical to mechanically fasten the safety appliance or the safety appliance bracket or support to the equipment, then the railroad shall submit a request to FRA for special approval of alternative compliance pursuant to § 238.21. Such a request shall explain the necessity for any relief sought and

shall contain appropriate data and analysis supporting its determination that any alternative method of attachment provides at least an equivalent level of safety.

(k) *Records.* Railroads shall maintain written or electronic records of the inspection and repair of the welded safety appliance brackets or supports on any equipment identified in paragraph (e) of this section. The records shall be made available to FRA upon request. At a minimum, these records shall include all of the following:

(1) Training or certification records for any person performing any of the inspections or repairs required in this section.

(2) The date, time, location, and identification of the person performing the initial and periodic safety appliance inspections for each piece of equipment identified in paragraph (e) of this section. This includes the identification of the person making any final determination as to the existence of a defect or crack under paragraph (i)(5) of this section.

(3) A record of all passenger equipment found with a safety appliance weldment that is defective or cracked either during the initial or periodic safety appliance inspection or while the equipment is in-service. This record shall also identify the cause of the crack or break.

(4) The date, time, location, identification of the person making the repair, and the nature of the repair to any welded safety appliance bracket or support identified in paragraph (e) of this section.

11. Section 238.230 is added to read as follows:

§ 238.230 Safety appliances—new equipment.

(a) *Applicability.* This section applies to passenger equipment placed in service on or after January 1, 2007.

(b) *Welded Safety Appliances.* Except as provided in § 238.229(c)(2), all passenger equipment placed into service on or after January 1, 2007, that is equipped with a safety appliance, required by the ''manner of application'' provisions in part 231 of this chapter to be attached by a mechanical fastener (*i.e.*, bolts, rivets, or screws), shall have any bracket or support necessary to attach the safety appliance to the piece of equipment mechanically fastened to the piece of equipment. Safety appliance brackets or supports shall not be welded to the car body unless the design of the equipment makes it impractical to mechanically fasten the safety appliance bracket or support and prior to placing a piece of equipment in service with a safety appliance bracket or support attached by welding, the railroad submits documentation to FRA, for FRA's review and approval, containing all of the following information:

(1) Identification of the equipment by number, type, series, operating railroad, and other pertinent data;

(2) Identification of the safety appliance bracket(s) or support(s) not mechanically fastened to the equipment;

(3) A detailed analysis describing the necessity to attach the safety appliance bracket or support to the equipment by a means other than mechanical fastening; and

(4) A copy and description of the consensus or other appropriate industry standard used to ensure the effectiveness and strength of the attachment;

(c) Any safety appliance bracket or support approved by FRA pursuant to paragraph (b) of this section shall be inspected and handled in accordance with the requirements contained in § 238.229(g) through (k).

(d) *Passenger Cars of Special Construction.* A railroad or a railroad's recognized representative may submit a request for special approval of alternative compliance pursuant to § 238.21 relating to the safety appliance arrangements on any passenger car considered a car of special construction under § 231.18 of this chapter. Any such petition shall be in the form of an industry-wide standard and at a minimum shall:

(1) Identify the type(s) of car to which the standard would be applicable;

(2) As nearly as possible, based upon the design of the equipment, ensure that the standard provides for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type already identified in part 231 of this chapter;

(3) Comply with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302;

(4) Specifically address the number, dimension, location, and manner of application of each safety appliance contained in the standard;

(5) Provide specific analysis regarding why and how the standard was developed and specifically discuss the need or benefit of the safety appliance arrangement contained in the standard;

(6) Include drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances; and

(7) Demonstrate the ergonomic suitability of the proposed arrangements in normal use.

(e) Any industry standard approved pursuant to § 238.21 will be enforced against any person who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under part 231 of this chapter by using the applicable defect code contained in Appendix A to part 231 of this chapter.

12. Section 238.231 is amended by revising paragraph (b) and paragraph (h)(3) and by adding paragraph (h)(4) to read as follows:

§ 238.231 Brake system.

* * * * *

(b) The design of passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release. This requirement will be met if the passenger equipment is designed or equipped and handled in accordance with any of the following:

(1) Designed to permit actual visual observation of the brake actuation and release without the inspector going on, under, or between the equipment;

(2) Equipped with piston travel indicators as defined in § 238.5 or devices of similar design and the equipment is inspected pursuant to the requirements contained in § 238.313 (j); or

(3) Equipped with brake indicators as defined in § 238.5, designed so that the pressure sensor is placed in a location so that nothing may interfere with the air flow to brake cylinder and the equipment is inspected pursuant to the requirements contained in § 238.313 (j).

* * * * *

(h) * * *

(3) Except for MU locomotives, on locomotives so equipped, the hand or parking brake as well as its parts and connections shall be inspected, and necessary repairs made, as often as service requires but no less frequently than every 368 days. The date of the last inspection shall be either entered on Form FRA F 6180–49A, suitably stenciled or tagged on the equipment, or maintained electronically provided FRA has access to the record upon request.

(4) A train's air brake shall not be depended upon to hold unattended equipment (including a locomotive, a car, or a train whether or not locomotive

is attached). For purposes of this section, ''unattended equipment'' means equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person. Unattended equipment shall be secured in accordance with the following requirements:

(i) A sufficient number of hand or parking brakes shall be applied to hold the equipment. Railroads shall develop and implement a process or procedure to verify that the applied hand or parking brakes will sufficiently hold the equipment with the air brakes released;

(ii) Except for equipment connected to a source of compressed air (*e.g.*, locomotive or ground air source), prior to leaving equipment unattended, the brake pipe shall be reduced to zero at a rate that is no less than a service rate reduction;

(iii) At a minimum, the hand or parking brake shall be fully applied on at least one locomotive or vehicle in an unattended locomotive consist or train;

(iv) A railroad shall develop, adopt, and comply with procedures for securing any unattended locomotive required to have a hand or parking brake applied when the locomotive is not equipped with an operative hand or parking brake;

(v) A railroad shall adopt and comply with instructions to address throttle position, status of the reverser lever, position of the generator field switch, status of the independent brakes, position of the isolation switch, and position of the automatic brake valve, or the functional equivalent of these items, on all unattended locomotives. The procedures and instruction shall take into account weather conditions as they relate to throttle position and reverser handle; and

(vi) Any hand or parking brakes applied to hold unattended equipment shall not be released until it is known that the air brake system is properly charged.

* * * * *

13. Section 238.303 is amended by adding a new paragraph (e)(17) to read as follows:

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

* * * * *

(e) * * *

(17) Each air compressor, on passenger equipment so equipped, shall be in effective and operative condition. MU passenger equipment found with an inoperative or ineffective air compressor at the time of its exterior calendar day mechanical inspection may remain in passenger service until the equipment's next exterior calendar day mechanical inspection where it must be repaired or removed from passenger service; provided, all of the following requirements are met:

(i) The equipment has an inherent redundancy of air compressors, due to either the make-up of the train consist or the design of the equipment;

(ii) The railroad demonstrates through verifiable data, analysis, or actual testing that the safety and integrity of a train is not compromised in any manner by the inoperative or ineffective air compressor. The data, analysis, or test shall establish the maximum number of air compressors that may be inoperative based on size of the train consist, the type of passenger equipment in the train, and the number of service and emergency brake applications typically expected in the run profile for the involved train;

(iii) The involved train does not exceed the maximum number of inoperative or ineffective air compressors established in accordance with paragraph (e)(17)(ii) of this section;

(iv) A qualified maintenance person determines and verifies that the inoperative or ineffective air compressor does not compromise the safety or integrity of the train and that it is safe to move the equipment in passenger service;

(v) The train crew is informed in writing of the number of units in the train consist with inoperative or ineffective air compressors at the location where the train crew first takes charge of the train;

(vi) A record is maintained of the inoperative or ineffective air compressor pursuant to the requirements contained in § 238.17(c)(4); and

(vii) Prior to operating equipment under the provisions contained in this paragraph, the railroad shall provide in writing to FRA's Associate Administrator for Safety the maximum number of inoperative or ineffective air compressors identified in accordance with paragraph (e)(17)(ii) of this section.

(viii) The data, analysis, or testing developed and conducted under paragraph (e)(17)(ii) of this section shall be made available to FRA upon request. FRA's Associate Administrator for Safety may revoke a railroad's ability to utilize the flexibility provided in this paragraph if the railroad fails to comply with the maximum limits established under paragraph (e)(17)(ii) or if such maximum limits are not supported by credible data or do not provide adequate safety assurances.

* * * * *

14. Section 238.307 is amended by adding paragraph (c)(13) and by revising paragraph (d) to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) * * *

(13) The hand or parking brake shall be applied and released to determine that it functions as intended.

(d) At intervals not to exceed 368 days, the periodic mechanical inspection shall specifically include the following:

(1) Inspection of the manual door releases to determine that all manual door releases operate as intended; and

(2) Inspection of the hand or parking brake as well as its parts and connections to determine that they are in proper condition and operate as intended. The date of the last inspection shall be either entered on Form FRA F 6180–49A, suitably stenciled or tagged on the equipment, or maintained electronically provided FRA has access to the record upon request.

* * * * *

15. Section 238.313 is amended by revising the first sentence of paragraph (g)(3) and by adding a new paragraph (j) to read as follows:

§ 238.313 Class I brake test.

* * * * *

(g) * * *

(3) Piston travel is within prescribed limits, either by direct observation, observation of a piston travel indicator, or in the case of tread or disc brakes by determining that the brake shoe or pad provides pressure to the wheel. * * *

* * * * *

(j) In addition to complying with all the Class I brake test requirements performed by a qualified maintenance person as contained in paragraphs (a) through (i) of this section, railroads operating passenger equipment that does not comply with the design requirement of § 238.231(b)(1) shall perform an additional inspection. At a minimum, the additional inspection requirement for equipment so designed shall include all of the following:

(1) An additional inspection by a qualified maintenance person of all items and components contained in paragraphs (g)(1) through (g)(15) of this section;

(2) The additional inspection shall be conducted at an interval not to exceed five (5) in-service days and shall be conducted while the equipment is over an inspection pit or on a raised inspection track; and

(3) A record of the additional inspection shall be maintained pursuant to the requirements contained in paragraph (h) of this section. This record can be combined with the Class I brake test record.

16. Section 238.321 is added to read as follows:

§ 238.321 Out-of-service credit.

When a passenger car is out of service for 30 or more consecutive days or is out of service when it is due for any test or inspection required by § 238.307 or § 238.309 an out of use notation showing the number of out of service days shall be made in the records required under § 238.307(e) and § 238.309(f). If the passenger car is out of service for one or more periods of at least 30 consecutive days, the interval prescribed for any test or inspection required by § 238.307 and § 238.309 may be extended by the number of days in each period the passenger car is out of service since the last test or inspection in question. A movement made in accordance with § 229.9 of this chapter or § 238.17 is not considered service for the purposes of determining the out-of-service credit.

Issued in Washington, DC, on November 30, 2005.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. 05–23672 Filed 12–7–05; 8:45 am]

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Federal Register

Thursday,
December 8, 2005

Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–OAR–2003–0121; FRL–8005–2]

RIN 2060–AM43

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On November 10, 2003, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for miscellaneous organic chemical manufacturing. Several petitions for judicial review of the final rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. Petitioners expressed concern with various requirements in the final rule, including applicability of specific operations and processes, the leak detection and repair requirements for connectors, criteria to define affected wastewater streams requiring control, control requirements for wastewater streams that contain only soluble HAP (SHAP), the definition of process condensers, and recordkeeping requirements for Group 2 batch process vents. In this action, EPA proposes amendments to the final rule to address these issues and to correct inconsistencies that have been discovered during the review process.

DATES: *Comments.* Comments must be received on or before January 24, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 19, 2005, a public hearing will be held on December 23, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA OAR–2003–0121, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, will be replaced by an enhanced Federal-wide electronic docket management and comment system located at *www.regulations.gov*. When this occurs, you will be redirected to that site to access the docket and submit comments. Follow the on-line instructions.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: Air and Radiation Docket and Information Center, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible.
- Hand Delivery: Air and Radiation Docket, EPA, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–OAR–2003–0121. The 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.regulations.gov* 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 *www.regulations.gov or e-mail*. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with a disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group (C504–04), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711; telephone number: (919) 541–5402; fax number: (919) 541–3470; e-mail address: *mcdonald.randy@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	NAICS *	Examples of regulated entities
Industry	3251, 3252, 3253, 3254, 3255, 3256, and 3259, with several exceptions.	Producers of specialty organic chemicals, explosives, certain polymers and resins, and certain pesticide intermediates.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.2435. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. 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.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov,* at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing also must call Mr. Randy McDonald to verify the time, date, and location of the hearing. A public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed amendments.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Organization of This Document. The information presented in this preamble is organized as follows:

I. Why are we proposing amendments to subpart FFFF?
II. How are we proposing to amend the compliance dates?
A. Existing Sources
B. Process Changes Resulting in New Compliance Requirements
III. How are we proposing to amend the applicability requirements?
A. Compounding and Finishing Operations in Polymer Processes
B. Carbon Monoxide Production
C. Boundary of a Miscellaneous Organic Chemical Manufacturing Process Unit That Produces a Solid Product
D. Applicability of the MON to Coke By-Product Plants
IV. How are we proposing to amend the requirements for process vents?
A. Process Condensers
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C. Compliance Requirements for Process Tanks
D. Provisions for Switching Batch Process Vents from Group 2 to Group 1
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F. Definitions of Continuous Process Vent and Related Terms
G. Definition of Group 1 Continuous Process Vent
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V. How are we proposing to amend the requirements for wastewater systems?
A. Definitions of Wastewater and Group 1 Wastewater
B. Management Requirements for Wastewater That is Group 1 for Soluble HAP
C. Discarding Materials to Water or Wastewater
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E. Definition of Wastewater
VI. How are we proposing to amend the requirements for equipment leaks?
VII. How are we proposing to amend the recordkeeping and reporting requirements?
A. Processes with Uncontrolled Emissions Below the Thresholds for Control
B. Standard and Nonstandard Batches
C. Operating Logs
D. Reporting Requirements for Emission Points that Change from Group 2 to Group 1
VIII. How are we proposing to change requirements that apply when requirements in subpart FFFF and another rule apply to the same equipment?
IX. What miscellaneous technical corrections are we proposing?
X. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Why are we proposing amendments to subpart FFFF?

On November 10, 2003, we promulgated NESHAP for miscellaneous organic chemical (MON) manufacturing as subpart FFFF of 40 CFR part 63. Petitions for review of the MON were filed in the U.S. Court of Appeals for the District of Columbia Circuit by American Chemistry Council, Eastman Chemical Company, Clariant LSM (America), Inc., Rohm and Haas Company, General Electric Company, Coke Oven Environmental Task Force (''COETF'') and Lyondell Chemical Company (collectively ''Petitioners'').[1] These matters were consolidated into *American Chemical Council, et al.* v. *EPA,* No. 04–1004, 04–1005, 04–1008, 04–1009, 04–1010, 04–1012, 04–1013 (D.C. Cir.). Issues raised by the petitioners included applicability of the final rule; leak detection and repair requirements for connectors; definitions of process condenser, continuous process vent, and Group 1 wastewater; treatment requirements for wastewater that is Group 1 only for SHAP; recordkeeping for Group 2 batch process vents; and notification requirements for Group 2 emission points that become Group 1 emission points. In early October 2005, the parties signed a settlement agreement. Pursuant to section 113(g) of the Clean Air Act (CAA), notice of the settlement was published in the **Federal Register** on October 26, 2005 (70 FR 61814).

Today's proposed amendments address the issues raised by Petitioners and include corrections and clarifications to ensure that the final rule is implemented as intended. Today's proposed amendments also provide some new compliance options, as well as new provisions that would reduce the burden associated with demonstrating compliance. For example, the use of biofilters is proposed as an option for complying with the 95 percent reduction emission limit for batch process vents, a new compliance option is proposed for wastewater that would allow certain waste management units in a biotreatment system to be uncovered if the wastewater being treated is Group 1 only for soluble HAP, and a new regulatory alternative for equipment leaks would simplify applicability by applying the same requirements to all MON processes and reduce the leak detection burden for connectors. We are also proposing revised recordkeeping requirements in 40 CFR 63.2525(e) for Group 2 batch process vents that would eliminate recordkeeping in certain situations and reduce the recordkeeping burden if non-reactive HAP usage is less

[1] The Fertilizer Institute and Arteva Specialties S.' ar.l also filed petitions for review but voluntarily withdrew their petitions.

than 10,000 pounds per year (lb/yr) or if emissions are less than 1,000 lb/yr, and we are proposing to eliminate the requirement to include results of engineering assessments that determine emissions from batch operations that have hazardous air pollutant (HAP) concentrations less than 50 parts per million by volume (ppmv) in your precompliance report.

II. How are we proposing to amend the compliance dates?

A. Existing Sources

The Miscellaneous Organic Chemical Manufacturing NESHAP promulgated on November 10, 2003, specifies that existing source must be in compliance with the NESHAP no later than November 10, 2006. Precompliance reports must be filed by May 10, 2006. We are proposing a new compliance date of May 10, 2008, because the proposed amendments are sufficiently far reaching and complex that an amended rule would effectively be a new rule warranting a new compliance date and because we do not anticipate finalizing the proposed amendments with sufficient time for parties to comply with the amended rule, which set forth provisions inconsistent with existing provisions.

Section 112(a)(3) of the CAA provides that existing sources are to be in compliance with applicable emission standards ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard.'' The November 10, 2003, Miscellaneous Organic Chemical Manufacturing NESHAP specify a compliance date 3 years from the issuance of that rule. Section 112(d)(6) of the CAA provides authority for the Administrator to revise the emission standards issued under CAA section 112 ''no less often than every 8 years.'' We believe the authority to revise the standards inherently includes the authority to set new compliance dates for revised rules. Congress provided us discretion to set a compliance date for existing sources of up to 3 years in order to provide time for retrofitting of controls where necessary. Thus, due to the extensive nature of the proposed amendments, we are proposing a new compliance date.

We believe that 18 months from the otherwise applicable compliance date will be sufficient for all sources to come into compliance with the proposed amendments. However, should any source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, each source may request an extension of up to 1 year in accordance with 40 CFR 63.6(i)(4) and (6).

B. Process Changes Resulting in New Compliance Requirements

We are proposing to add language to 40 CFR 63.2445 to clarify when compliance is required after making any of the following types of process changes after the compliance date: Changing the status of any emission point from Group 2 to Group 1, increasing uncontrolled hydrogen halide and halogen emissions from all process vents within a process above 1,000 lb/yr, increasing uncontrolled HAP metals emissions from all process vents within a process at a new source above 150 lb/yr (see discussion later in this preamble regarding the change from PM HAP to HAP metals), or changing the status of a control device from small to large. A large control device is a control device that has an inlet HAP load equal to or greater than 10 tons per year (tpy), and a small control device has an inlet HAP load less than 10 tpy.

After making any of the noted process changes, information presented in the notification of compliance status report demonstrating initial compliance must be updated according to 40 CFR 63.2520(e)(10)(i). If the situations after any of the changes described above had existed on the initial compliance date, a performance test (or design evaluation in some cases) would have been required to demonstrate initial compliance. Thus, a performance test or design evaluation is also required to satisfy the requirements of 40 CFR 63.2520(e)(10)(i) after one of the noted process changes, and the results must be included in the compliance report for the period during which the change occurred. Compliance reports are due 2 months after the end of a reporting period. This means a facility would have between approximately 60 and 240 days, depending on when the change occurred during the reporting period, to complete the performance test or design evaluation and include it in the applicable report. We consider 60 days to be insufficient, particularly for a performance test. Work on a design evaluation could begin before the change occurs, but a performance test cannot be conducted until the equipment is operating. We also consider the potential variability in timing among sources to be unreasonable. Therefore, we are proposing language in 40 CFR 63.2445 to specify that performance tests and design evaluations must be conducted within 150 days after making one of the types of process changes listed above. This timeframe is also consistent with the amount of time allowed to complete these activities after the initial compliance date and include the results in the notification of compliance status report.

Sections 63.2445(b) and (c) of the promulgated rule require compliance with all applicable requirements no later than the compliance date. If you make a process change after the compliance date, this requirement means you must comply with all applicable requirements for the changed situation beginning on the date the change occurs. To clarify this requirement for the types of process changes described above, we are proposing language in 40 CFR 63.2445 to explicitly state that Group 1 requirements (*e.g.*, emission limits in table 2 to subpart FFFF for batch process vents) apply beginning on the date of a change from Group 2 to Group 1, that applicable emission limits in table 3 to subpart FFFF apply beginning on the date HAP metals or hydrogen halide and halogen HAP emissions are increased above applicable thresholds, and monitoring and recordkeeping requirements for large control devices apply beginning on the date a control device changes status from small to large.

III. How are we proposing to amend the applicability requirements?

We are proposing several changes to the applicability requirements, particularly to clarify and add exceptions in order to make the regulation consistent with our intent and the data underlying the standards. Another change involves the boundary of a miscellaneous organic chemical manufacturing process unit (MCPU) that produces a solid product.

A. Compounding and Finishing Operations in Polymer Processes

We are proposing to revise 40 CFR 63.2435(c)(4) to clarify the types of polymer finishing operations that are exempted from subpart FFFF. Section 63.2435(c)(4) currently exempts only fabricating operations (such as spinning a polymer to its end use). Another finishing operation (compounding of purchased resins) is exempted by the exemption in 40 CFR 63.2435(c)(5) for production activities described using the 1997 version of NAICS code 325991. These exemptions for finishing operations were included in the final rule due to the minimal potential for emissions from such operations. After reviewing this issue, we have determined that additional finishing operations can be exempted for the same reason. Thus, the proposed

amendments to 40 CFR 63.2435(c)(4) would expand the exemption for finishing operations to cover activities that can be classified as fabricating, compounding, drawing, or extrusion operations, provided they do not meet certain specified conditions. For example, the exemption would not apply where residual monomer remains with some polymers and an intended purpose of the finishing operation is to remove the residual monomer. A finishing operation also would not be exempt if it involves processing with HAP solvent (*e.g.*, if a solid polymer product is dissolved in a HAP solvent prior to the finishing operation). These changes would make the exemptions consistent with the exemptions in previous rules for polymer production processes such as 40 CFR part 63, subpart JJJ.

As noted above, spinning a polymer into its end use is given as an example of ''fabricating operations'' in the existing rule. To further exemplify the meaning of this term, the proposed amendments provide compressing a solid polymer into its end use as another example.

The proposed amendments would exempt all compounding operations with a previously produced solid polymer, not just compounding of purchased resins as currently provided for in 40 CFR 63.2435(c)(5). The compounding operation is the same whether it is done with purchased resins or at the facility that produced the resins. Thus, there is no reason to limit the exemption to compounding of purchased resins. To clarify what we mean by ''compounding operations,'' the proposed amendments describe them as ''blending, melting, and resolidification of a solid polymer * * * for the purpose of incorporating additives, colorants, or stabilizers.''

The proposed amendments include a new exemption for extrusion and drawing operations. These finishing operations are described in the proposed amendments as operations that ''convert[] an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product.'' Note that this means some extrusion and drawing operations are not exempt (in addition to those operations that are intended to remove residual HAP monomer or involve processing with a HAP solvent). Specifically, extrusion and drawing operations integral to production of the solid polymer are part of a MCPU and are not exempt.

B. Carbon Monoxide Production

While carbon monoxide (CO) is an inorganic compound,[2] petitioners argued that the final rule was ambiguous whether CO production was covered by the MON since it is included under NAICS category 325120, and the MON has no exemption for CO production. While we did not intend to cover CO production under the MON, it is not a HAP and thus not subject to regulation under CAA section 112, we are proposing to clarify the MON by adding a new 40 CFR 63.2435(c)(7) to specifically exempt CO production processes.

C. Boundary of a Miscellaneous Organic Chemical Manufacturing Process Unit That Produces a Solid Product

A miscellaneous organic chemical manufacturing process unit is defined in 40 CFR 63.2550(i) of the MON as ''all equipment which collectively function to produce a product * * *'' The end of a process is the point at which product is transferred to a storage tank or a transfer rack because 40 CFR 63.2435(d) specifies that such equipment is associated with a process (i.e., not part of the process), and it may be part of the MCPU if it meets specified criteria. Both liquid and solid products may be stored or transferred to shipping containers. However, the definitions of ''storage tank'' and ''transfer rack'' explicitly refer to storage or transfer of organic liquids. Thus, it is not clear if storage and transfer of solid products should be subject to these definitions, if they are unit operations that are part of the process, or if they are exempt from the final rule.

To eliminate this ambiguity, we are proposing to revise the definition of ''miscellaneous organic chemical manufacturing process'' in 40 CFR 63.2550(i) to specify the endpoint of a process that produces a solid product. If the product is dried, the end of the process would be the dryer. For a polymer production process without a dryer, the end of the process would be the extruder or die plate. This is consistent with the revisions to the exemption for polymer finishing operations discussed above. There would be two exceptions to these endpoints. One exception is if the dryer, extruder, or die plate is followed by blending or another operation that is designed and operated to remove HAP solvent or residual HAP monomer from the solid product. The second exception is if the dried solid is mixed with a HAP-based solvent. In both cases, the HAP removal operation would be the last step in the process.

D. Applicability of the MON to Coke By-Product Plants

One of the petitioners requested clarification as to the applicability of the MON to coke by-product plants. On January 30, 2001, EPA deleted coke by-product plants from the list of major and area sources of HAP required by CAA section 112(c)(1). (See 66 FR 8220.) Consequently, 40 CFR part 63 miscellaneous achievable control technology (MACT) standards promulgated under CAA section 112(d), such as the MON, would not apply to the deleted coke by-product plant source category. Moreover, as EPA explained in 2001, coke by-product plants remain subject to the pre-existing NESHAP for benzene emissions from coke by-product recovery plants at 40 CFR part 61, subpart L. (See 66 FR at 8222.) EPA is not proposing any changes to the MON in order to clarify this issue, as it is unnecessary to do so. Today's clarification is wholly consistent with EPA's previous action in 2001 deleting the coke by-product plant source category.

IV. How are we proposing to amend the requirements for process vents?

A. Process Condensers

We are proposing several changes to clarify the definition of ''process condenser,'' the procedures for calculating emissions when process condensers are used, and related recordkeeping and reporting requirements. We are proposing changes to the definition because we have become aware of an inconsistency between the definition of that term as it is used in the MON and the way industry representatives interpreted the term when they were reporting uncontrolled emissions in response to our information request in 1997. The inconsistency stems from a difference in the interpretation of ''integral to a process.'' Companies considered condensers to be integral to a process if collected material was returned to the process or used for fuel value, whereas

[2] Numerous government documents and technical references identify CO as an inorganic compound. For example, the term ''volatile organic compounds'' is defined in 40 CFR 51.1000(s) as ''any compound of carbon, excluding carbon monoxide * * * which participates in atmospheric photochemical reactions.'' The definition goes on to list compounds that have negligible photochemical reactivity. Since CO was explicitly excluded, and it is clearly volatile, the definition makes it clear that CO is not considered to be an organic compound. In addition, Hawley's Condensed Chemical Dictionary states that CO is classified as an inorganic chemical, and the physical properties of CO are listed in a table of inorganic compounds in the Chemical Engineers' Handbook.

we considered condensers to be integral only if they reduced the temperature below the bubble point or boiling point. Thus, the companies reported uncontrolled emissions at the outlet of more condensers than we realized, which means the current regulatory requirements do not align with the data that were used to develop the MACT floor. The proposed revisions would correct this misalignment by clarifying the term process condenser as described below.

Section 63.2460(c)(1) of the current rule references the definition of process condenser in 40 CFR 63.1251 of 40 CFR part 63, subpart GGG (the Pharmaceuticals Production NESHAP). According to this definition, the primary purpose of a process condenser is to recover material as an integral part of a process. To clarify what is meant by the terms ''recover'' and ''an integral part of a process,'' we are proposing to create a freestanding (i.e., non-cross referenced) term ''process condenser'' in 40 CFR 63.2550(i) of subpart FFFF. This proposed definition would specify that ''a primary condenser or condensers in series are considered to be integral to the MCPU if they are capable of and normally used for the purposes of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse or for sale for fuel value, use, or reuse.'' The definition of process condenser in subpart GGG also specified that a process condenser included a condenser recovering condensate from a process at or above the boiling point, and all condensers in line prior to a vacuum source. This part of the definition is retained in the proposed definition for 40 CFR 63.2550(i).

The new language related to ''recover'' and ''integral part of a process'' is already used in the definition of ''recovery device'' in 40 CFR part 63, subpart SS, that is referenced in 40 CFR part 63, subpart FFFF, for continuous process vents. Thus, the proposed change to the definition of process condenser makes it clear that the concept of recovering chemicals with a condenser has similar meaning regardless of whether the vent is associated with a batch unit operation or a continuous unit operation. An important point to note is that the proposed changes to the definition mean condensers cannot be recovery devices for the purpose of complying with the 95 percent reduction requirement specified in table 2 to subpart FFFF because any recovery operation makes the condenser a process condenser. Condensers that are not process condensers can still be control devices used alone or in series with other control devices to comply with either the 98 percent reduction or the outlet concentration option.

We are also proposing additional changes to 40 CFR 63.2460(b) and (c) to clarify procedures for calculating uncontrolled emissions associated with process condensers. We are proposing to amend paragraphs (1) and (2) in 40 CFR 63.2460(b) to clarify that the referenced procedures for calculating uncontrolled emissions from heating and depressurization events for batch process vents are only for situations where the process vessel is not equipped with a process condenser. We are proposing to add a new paragraph in 40 CFR 63.2460(b) to provide the appropriate procedures for calculating uncontrolled emissions for all types of emission episodes when a process vessel is equipped with a process condenser.

We are proposing to add regulatory text to 40 CFR 63.2460(c) specifying that you must make the determination of whether a condenser is a process condenser or air pollution control device as part of your initial compliance demonstration, and you must report the results and supporting rationale in your notification of compliance status report. This determination is made on a process basis, which means a condenser is either a process condenser for all gas streams from a given process, or it is an air pollution control device for all gas streams from the process. Furthermore, for nondedicated operations, this means a condenser may be a process condenser for some processes and an air pollution control device for others.

Finally, we are proposing changes to the initial compliance demonstration for process condensers to be consistent with the changes in the definition. Section 63.2460(c)(2)(v) references the initial compliance demonstration procedures in 40 CFR 63.1257(d)(3)(iii)(B) for process condensers that are not followed by an air pollution control device or the air pollution control device is not in compliance with the alternative standard. The procedures require you to either measure the exhaust gas temperature and show it is less than the boiling or bubble point of the substances in the process vessel or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. To be consistent with the proposed definition of process condenser, we are also proposing to revise 40 CFR 63.2460(c)(2)(v) to specify that this demonstration is only required for process condensers that are used with boiling operations (at least part of the time), and that the demonstration must be performed while boiling operations are occurring.

B. Requirements for HAP Metal Compounds

Table 3 to the final rule specifies emission limits for particulate matter (PM) HAP emissions from process vents at new sources, but the final rule does not define ''PM HAP.'' After reexamining this provision, we decided to propose a number of changes to table 3 and the corresponding compliance procedures specified in 40 CFR 63.2465(d). These proposed amendments focus the emission limit on metallic HAP compounds and clarify compliance requirements for metallic HAP.

Our intent in setting the PM HAP emission limit in table 3 to the final rule was to ensure the control of metallic PM HAP emissions. Organic compounds that are emitted as solids are separately addressed by the emission limits for organic compounds (see tables 1 and 2 of subpart FFFF). The term PM HAP, and associated measurement and monitoring techniques, however, does not clearly capture this intent. Accordingly, to clarify this point, we are proposing a number of changes. First, we are proposing to revise table 3 in the rule to specify emission limits for ''HAP metals'' rather than ''PM HAP.'' This does not impact the substance of the final rule as uncontrolled HAP metals must still be reduced by 97 percent, identical to the reduction specified for PM HAP in the final rule. Second, the term ''HAP metals'' would be defined in 40 CFR 63.2550(i) to mean the metal portion of antimony compounds, arsenic compounds, beryllium compounds, cadmium compounds, chromium compounds, cobalt compounds, lead compounds, manganese compounds, nickel compounds, and selenium compounds. Third, the emissions threshold above which control is required would be changed from 400 lb/yr of PM HAP (i.e., compounds that contain metals) to 150 lb/yr of HAP metals. Fourth, to determine the uncontrolled emissions of HAP metals, we are proposing to allow the use of process knowledge, engineering assessments, or test data. If you do not wish to determine the uncontrolled emissions, we are proposing to allow you to designate the HAP metals emissions as greater than 150 lb/yr. Finally, to demonstrate initial compliance with the 97 percent reduction requirement for the HAP metals, we are proposing to allow the use of Method 29 of appendix A of 40

CFR part 60 as well as Method 5 of appendix A of 40 CFR part 60.

The proposed definition of ''HAP metals'' and the revised emissions threshold are based on the metal portion of the compounds rather than the total mass of the compounds that contain metals simply to clarify that the threshold does not include non-HAP particulate matter. The revised threshold was developed using the same process that was used to develop the original threshold for the MACT floor. This process emitted 400 lb/yr of manganese sulfate. Since manganese sulfate is about 36 percent manganese by weight, the amount of manganese emitted was about 150 lb/yr. Method 29 of appendix A of 40 CFR part 60 allows you to determine the quantity of each HAP metal at the inlet and outlet of the control device(s). However, since controls for PM would also control the HAP metals, a second option is to use Method 5 of appendix A of 40 CFR part 60 to determine the quantity of PM at the inlet and outlet of the control device(s).

C. Compliance Requirements for Process Tanks

As defined in 40 CFR 63.2550(i), batch process vents include process tanks. Table 2 to subpart FFFF requires reduction of HAP from batch process vents by greater than or equal to 98 percent, or 95 percent if HAP is recovered and reused onsite. As currently written, however, the recovery option is restricted to situations where there is a closed-vent system and a recovery device. Such a system, however, is not the only option for preventing loss of product. Floating roof technology achieves 95 percent or greater reductions by preventing evaporation. Thus, it is a pollution prevention control technology that meets the intent of the 95 percent recovery option for batch process vents in table 2 to subpart FFFF.

Indeed, several rules, such as the hazardous organic NESHAP (HON) and the new source performance standards in 40 CFR part 60, subpart Kb, specify that emissions from storage tanks must be reduced using an internal or external floating roof or by venting the emissions through a closed-vent system to a control device that reduces the emissions by at least 95 percent. To allow floating roof technology to comply with batch process tanks we are revising table 2 to subpart FFFF to reference the requirements of subpart WW of this part for any process tank. In addition, to make the referenced language consistent with process vent requirements, we propose adding regulatory text in 40 CFR 63.2460(c) specifying that when subpart WW uses the term ''storage vessel,'' it means ''process tank'' for the purposes of 40 CFR 63.2460.

D. Provisions for Switching Batch Process Vents From Group 2 to Group 1

We are proposing to add a new 40 CFR 63.2460(b)(6) to specify that a performance test report (or design evaluation, if emissions are controlled by a small control device) must be submitted in the next compliance report whenever you switch from Group 2 batch process vents to Group 1. This requirement is inherent in the existing rule because an initial compliance demonstration is required for Group 1 vents but not Group 2 vents. The proposed language simply makes more explicit this requirement. Also see the discussion earlier in this preamble regarding compliance dates for emission points that switch from Group 2 to Group 1.

We are also proposing to include language in the new 40 CFR 63.2460(b)(6) to clarify the recordkeeping and reporting requirements associated with making a switch from Group 2 to Group 1. Section 63.2520(e)(10)(ii)(C) currently requires a 60-day advance notification of any change in status from Group 2 to Group 1. The primary reason for this notification is that it alerts the regulatory authority to a situation where a performance test (or design evaluation) will be needed. However, we realize that certain facilities have frequent turnover in their batch production processes, and it can be difficult to predict 60 days in advance which new processes will grow to the point that they have Group 1 batch process vents. To minimize this burden, we are proposing to eliminate the advance notification requirement if records show the process has been in compliance with the 10,000 lb/yr threshold for Group 2 batch process vents for at least 365 days prior to the switch (on a rolling average). For these processes, we believe it will be sufficient to receive notification of the switch in the next compliance report. The existing requirement for a 60-day advance notification of a switch would still apply if the process has not been operated for at least one year with Group 2 batch process vents. See discussion later in this preamble regarding the related changes to the reporting requirements in 40 CFR 63.2520(e)(10).

E. Definition of Batch Process Vent

We are proposing minor changes to clarify the threshold levels specified in the definition of ''batch process vent.'' Although these changes will not change the thresholds or the intended meaning of the definition, we are including a detailed explanation in this preamble of how to apply the thresholds to ensure that the revised language is interpreted as we intended. We are also proposing to make a separate change to reduce the burden of demonstrating whether emission streams exceed these thresholds and, thus, constitute batch process vents.

Item number 8 in the definition of batch process vent specifies two HAP thresholds below which emission streams are not a batch process vent. The first threshold is 50 ppmv of HAP. This threshold applies to the emission stream from each individual emission episode (*e.g.*, a displacement, purge, vacuum operation, etc.). If the average HAP concentration over the episode is less than 50 ppmv, then the emission stream is not a batch process vent. The second threshold is 200 lb/yr of HAP. This threshold applies to the collective emissions from a single vent (*i.e.*, release point); including releases below the 50 ppmv threshold. Note that HAP concentration is not necessarily required for determination of the single vent emission rate. If the total HAP emissions for a vent are less than 200 lb/yr, then that vent is not a batch process vent, and none of the emission streams that discharge from it are subject to requirements in 40 CFR part 63, subpart FFFF. The vent in this determination may be for a single unit operation that has multiple emission episodes. On the other hand, if you connect the vents from multiple unit operations to a manifold and discharge combined emissions at one point, then the discharge point is the vent for the purposes of this determination. Note that the HAP in emission streams that are exempted by this determination (either because they are individually below the 50 ppmv threshold or because the total emissions from the vent are below the 200 lb/year threshold) do not need to be counted towards the 10,000 lb/yr threshold in the determination of whether batch process vents are Group 1 batch process vents.

The following example provides a simple illustration of how to apply these thresholds. Consider operations in a single vessel that generate HAP emissions from three emission episodes: the first contains HAP at >50 ppmv that amounts to 180 lb/yr when summed over all of the batches for the process in a year, the second contains HAP at <50 ppmv and 20 lb/yr, and the third contains <50 ppmv and 250 lb/yr. A batch process vent exists for this vessel

because total emissions exceed 200 lb/yr and the first emission episode has a HAP concentration >50 ppmv. Note that only the first emission episode meets the definition of batch process vent. In addition, only the 180 lb/yr from the first emission episode must be added with emissions from other batch process vents to determine if total emissions from the process meet the 10,000 lb/yr threshold. If the example were changed slightly to have a manifolded vent with emissions from both this vessel and other operations within the process, your manifolded vent would be a batch process vent (regardless of the contribution from the other operations) because the total HAP emissions from the original vessel alone exceed the 200 lb/yr threshold, and an emission episode from the vessel exceeds 50 ppmv.

Other proposed changes to the definition involve the procedures for conducting and reporting the results of an engineering assessment to determine the HAP concentration or mass emission rate for emission streams that will be exempt from control because it is determined that HAP is present at a concentration less than 50 ppmv or a mass emission rate less than 200 lb/yr. Item 8 in the current definition specifies that you may determine the concentration or mass emission rate using an engineering assessment as discussed in 40 CFR 63.1257(d)(2)(ii) of subpart GGG. According to the referenced provision, you could use an engineering assessment only if you first demonstrate that the equations in 40 CFR 63.1257(d)(2)(i) are not applicable. You would also have to provide the results and supporting information in your precompliance report for this finding as well as for the engineering assessment that you want to use.

Since promulgation, it has been brought to our attention that many emission streams from batch operations in MON processes are likely to have HAP emissions below the specified thresholds. As a result, this provision is likely to impose a substantial burden on both affected sources and regulatory agencies. We have determined that such an expenditure of resources on documenting and approving procedures used to estimate emissions from these minor sources imposes an unreasonable regulatory burden relative to the additional precision potential achieved by using the equations in 40 CFR 63.1257(d)(2)(i).

To minimize this burden, we are proposing changes to item 8 of the definition of batch process vent and to related precompliance reporting requirements in 40 CFR 63.2520(c)(4). One new provision in the definition of batch process vent would specify that you do not have to demonstrate that the equations in 40 CFR 63.1257(d)(2)(i) are not appropriate before you may use an engineering assessment, and the second would specify that the precompliance reporting requirements specified in 40 CFR 63.1257(d)(2)(ii)(E) do not apply for the purposes of demonstrating compliance with the applicable threshold. One of the proposed changes to 40 CFR 63.2520(c)(4) would eliminate the requirement to include data and results from an engineering assessment in your precompliance report if you determine the HAP concentration is less than 50 ppmv. We believe that this reporting requirement can be eliminated without compromising the regulatory agency's ability to determine compliance; documenting these results in your notification of compliance status report will be sufficient. Another proposed change to 40 CFR 63.2520(c)(4) would eliminate the requirement to include the results of an engineering assessment that is based on previous test data in your precompliance report. Results based on test data do not need to be approved by the regulatory agency, and we believe that documenting these results in your notification of compliance status report will be sufficient.

F. Definitions of Continuous Process Vent and Related Terms

In the existing rule, only air oxidation reactors, distillation units, and reactors can have continuous process vents because the definition of this term in 40 CFR 63.2550(i) references the criteria in 40 CFR 63.107 of the HON. We are proposing to revise this definition to specify that it applies to any continuous unit operation for the purposes of 40 CFR part 63, subpart FFFF. We determined that this change is needed because the data we used to develop the MACT floor for continuous process vents was not limited to air oxidation reactors, distillation units, and reactors.

We also re-examined the data to determine if any distinct class of continuous process vents, such as atmospheric dryers, would have a different MACT floor than other classes or the combined group of all continuous process vents. We concluded that developing separate MACT floors would be infeasible because data were sparse and inadequate to develop separate floors. However, the data we have indicates that several atmospheric dryers, which are not considered continuous vents in the current rule, have emission characteristics that are sufficiently similar to other continuous process vents in our database such that they should be included in the definition of continuous process vents.

We are also proposing to add another provision to the continuous process vent definition to provide that the determination of whether a gas stream is a continuous process vent must be made at a point before the combination of the gas stream with any other gas streams from process operations. As currently written, when continuous flow gas streams from continuous operations are combined with other gas streams, 40 CFR 63.107(b) would allow determination of whether the combined stream is a continuous process vent. This is inconsistent with our intent that continuous process vents and batch process vents be separate, distinct streams. This intent is evident in the hierarchical provisions in 40 CFR 63.2450(c) for determining applicable requirements for combined streams. The proposed change would eliminate this inconsistency and ensure the rule is implemented consistent with our intent.

Surge control vessels are used in a process to transition from one operation to another. Consistent with the current definition of continuous process vent, the existing definition in 40 CFR part 63, subpart FFFF describes surge control vessels as vessels that precede continuous reactors, air oxidation reactors, and distillation units (*i.e.*, the only operations that have continuous process vents under the existing rule). If the universe of continuous process vents expands as proposed above, then a comparable change is needed in the definition of surge control vessel. To maintain consistency, we are proposing to use the term ''continuous operations'' in place of the reference to reactors, air oxidation reactors, and distillation units in the definition of surge control vessel. The term ''continuous operation'' is not defined in the existing rule. However, since the final rule already contains a definition for the term ''batch operation,'' we are proposing to define a continuous operation as any MON operation that is not a batch operation.

G. Definition of Group 1 Continuous Process Vent

We are proposing to revise the definition of ''Group 1 continuous process vent'' by adding an exemption for continuous process vents with a flow less than 0.005 standard cubic meter per minute, which was inadvertently excluded from the MON. This error occurred because rather than referencing the definition in 40 CFR 63.111 of the HON, we decided to specifically define this term in 40 CFR 63.2550(i) of subpart FFFF because the

definition is short and the key element of the definition, the total resource effectiveness (TRE) threshold, differs between the two rules. While our intent was that other elements of the definition would be the same as in the HON we neglected to include the flowrate threshold. The proposed amendment corrects this oversight.

We believe this correction is appropriate in part because the HON and other NESHAP that also use the same threshold often apply to the same facilities that are subject to 40 CFR part 63, subpart FFFF. Thus, making the definitions more consistent between the rules may reduce both the burden on the affected sources and the potential for inadvertent deviations from requirements.

H. Requirements for Biofilter Control Devices

Interest in using biofilters to control emissions is growing. Therefore, we are proposing to specify that biofilter control devices may be used to comply with the 95 percent reduction option (or outlet concentration limit) for batch process vents. We are also proposing to add a definition for biofilter in 40 CFR 63.2550(i) that is consistent with the definition used in subpart DDDD to part 63 (Plywood and Composite Wood Products NESHAP). Although biofilters are not recovery devices, we are proposing to allow their use for complying with the 95 percent option because they have the ability to meet this limit and they have few cross media impacts.

In addition to specifying that biofilters may be used to comply with the emission limit for batch process vents, we are also proposing initial compliance and monitoring requirements. Initial compliance would have to be demonstrated by conducting a performance test according to the procedures specified in 40 CFR 63.997. A design evaluation would not be allowed because we do not have information on the design characteristics that could be used to demonstrate proper operation and maximum performance of biofilters. You would also have to establish operating limits for either the biofilter bed temperature or the outlet organic concentration based on continuous monitoring conducted during the performance test. Extremes in temperature can slow or halt microbial activity. Thus, monitoring temperature helps determine the health of the microorganism population.

If you elect to measure temperature, you would be allowed to place multiple thermocouples in representative locations throughout the biofilter bed and determine the average from these readings before determining 15-minute or more frequent averages. As for other types of control devices, you would be able to develop the operating limits based on results of a previous performance test that meets all of the requirements in 40 CFR 63.997 and achieves the required reduction. However, we are proposing to require that the operating limits be based only on these measurements. Engineering assessments and manufacturer's recommendations could not be used to supplement the test data. You would also be required to conduct repeat performance tests within 2 years following each previous test and within 150 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

Monitoring to demonstrate continuous compliance with the emission limit would be required for the same parameter measured during the performance test. The continuous parameter monitoring system (CPMS) monitoring and recordkeeping requirements in 40 CFR 63.996 and 40 CFR 63.998 would apply to temperature monitors, and the continuous emission monitoring system (CEMS) monitoring requirements in subpart A of 40 CFR part 63 would apply to organic monitoring devices.

I. Emission Limit for Hydrogen Halide and Halogen HAP From Process Vents

We are proposing to add a halogen atom mass flow rate emission limit of 0.45 kilograms per hour (kg/hr) as an alternative to the current emission limits that require either a 99 percent reduction or control to an outlet concentration limit of 20 ppmv because we inadvertently neglected to include it in the final rule. This control option is already available for hydrogen halide and halogen HAP emissions generated by combusting halogenated organic vent streams, and there is no reason not to include it for hydrogen halide and halogen HAP emissions from process vents. This control option also would make the requirements for hydrogen halide and halogen HAP consistent with the requirements for combusting halogenated organic vent streams. The amendment will allow operators with halogenated Group 1 streams also containing greater than 1,000 pounds per year halides to use the 0.45 kg/yr control option for combustion devices.

V. How are we proposing to amend the requirements for wastewater systems?

A. Definitions of Wastewater and Group 1 Wastewater

We are proposing several changes to the criteria for Group 1 wastewater in 40 CFR 63.2485(c) to address inconsistencies identified by industry regarding concentration thresholds for partially soluble HAP (PSHAP compounds in table 8 to subpart FFFF) and soluble HAP (SHAP compounds in table 9 to subpart FFFF). We are also proposing to change the HAP threshold in one set of criteria for Group 1 wastewater at a new source due to uncertainty regarding the performance at the source originally identified as the best performing source.

The three sets of criteria in the final rule are as follows:

- The total annual average concentration of compounds in table 8 to this subpart is greater than 50 parts per million by weight (ppmw), and the combined total annual average concentration of compounds in tables 8 and 9 to this subpart is greater than or equal to 10,000 ppmw at any flowrate.
- The total annual average concentration of compounds in table 8 to this subpart is greater than 50 ppmw, the combined total annual average concentration of compounds in tables 8 and 9 to this subpart is greater than or equal to 1,000 ppmw, and the annual average flowrate is greater than or equal to 1 1/min.
- The total annual average concentration of compounds in table 8 to this subpart is less than or equal to 50 ppmw, the total annual average concentration of compounds in table 9 to this subpart is greater than or equal to 30,000 ppmw at an existing source or greater than or equal to 4,500 ppmw at a new source, and the total annual load of compounds in table 9 to this subpart is greater than or equal to 1 tpy.

The originally proposed wastewater provisions (67 FR 16154; April 4, 2002) closely followed the provisions in the HON, including Group 1 applicability determinations based on the total HAP in the wastewater streams. In response to comments on the proposed rule, we decided to develop the Group 1 criteria listed above based on SHAP and PSHAP, which is analogous to the approach used in the Pharmaceuticals Production NESHAP. By carving out streams that contain only soluble HAP but continuing to look at total HAP in all other streams, we created an inconsistency that became apparent only after promulgation of the rule. Specifically, a wastewater stream with less than 30,000 ppmw of SHAP would

not be Group 1 if no PSHAP was present, however, it would be Group 1 if there was at least 50 ppmw of PSHAP and 10,000 ppmw of total HAP. We are now proposing additional changes to the Group 1 criteria to more closely match the format used in the Pharmaceuticals Production NESHAP.

We are proposing to make the lower concentration thresholds (*i.e.*, 1,000 ppmw and 10,000 ppmw) for PSHAP rather than total HAP, and to make the higher concentration threshold (*i.e.*, 30,000 ppmw) for total HAP rather than SHAP. We are also proposing a PSHAP mass load threshold for the streams with at least 10,000 ppmw of PSHAP because the other two sets of criteria listed above and the Group 1 criteria in the Pharmaceuticals Production NESHAP also have minimum mass load thresholds. The proposed level is 200 lb/yr, which is calculated using 10,000 ppmw and an average annual flow of 0.02 1/min.

We are also proposing to amend the third set of criteria for Group 1 wastewater streams by changing the total PSHAP and SHAP threshold for new sources from 4,500 ppmw to 30,000 ppmw. The original threshold was based on the lowest methanol concentration in a stream that was sent to a treatment unit that operated at a performance level equivalent to the level required in the HON; this was determined to be the best performing source. The stream that was determined to meet these conditions had a concentration of 4,500 ppmw, and it was sent to an air stripper (followed by incineration of the overhead gas stream). However, since promulgation of the final rule, questions have been raised about whether such a system is at least equivalent to the design steam stripper option in the HON (*i.e.,* the treatment part of the MACT floor for wastewater at MON sources). Without actual test data for the specific facility, we are unable to determine that the performance of an air stripper system is more efficient than a design steam stripper for a soluble HAP like methanol. Therefore, we removed the facility with the 4,500 ppmw concentration from our new source analysis. The best performing source in the revised analysis has a wastewater stream with a methanol concentration of 30,000 ppmw. Therefore, we are proposing to use this concentration as the threshold for new sources.

A few of the streams in our database would no longer be Group 1 streams under the revised criteria, and a few other streams are now Group 1 based on a different set of criteria. The changes do not affect the MACT floor determinations. Overall performance of the final rule for the streams in our database may be reduced by the slight reduction in the number in Group 1 streams. However, most of the streams that are no longer Group 1 are at facilities that still have other Group 1 streams that will need to be controlled, and only one of the remaining streams has a load over 200 lb/yr.

B. Management Requirements for Wastewater That Is Group 1 for Soluble HAP

We are proposing to add an alternative compliance option in a new 40 CFR 63.2485(n) for wastewater streams that are Group 1 for soluble HAP and receive biological treatment. Under the proposed option, you would not be required to comply with the emission suppression requirements (*i.e.,* covers) for an equalization unit, neutralization unit, or clarifier prior to the activated sludge unit, provided you demonstrate that the treatment system achieves at least 90 percent destruction of the total PSHAP and SHAP entering the equalization unit (or whichever unit is first in the series of units). In addition to the load from streams that are Group 1 for soluble HAP, this total must include the PSHAP and SHAP in all Group 2 streams from MCPU that are sent to the biotreatment unit. If your wastewater stream is Group 1 for PSHAP as well as SHAP (*i.e.,* the stream meets the criteria specified in 40 CFR 63.2485(c)(1) or (2) as well as the criteria in 40 CFR 63.2485(c)(3)), you may elect to meet the requirements specified in table 7 to subpart FFFF for the PSHAP in the stream and then comply with this new option for the remaining SHAP.

To demonstrate initial compliance with this alternative, use the new equation 1 in 40 CFR 63.2485(n)(2) and comply with the following requirements. First, use the procedures specified in 40 CFR 63.145(f)(1) and (2) to estimate the flow rate and PSHAP and SHAP concentrations at the inlet to the equalization unit under representative conditions, and use these data to calculate the mass flow rate of total PSHAP and SHAP into the equalization unit. Second, use EPA's WATER9 model to estimate emissions from the equalization unit, neutralization unit, and clarifier. Note that you must also conduct testing or use other procedures to validate the modeling results, and the data and results of the validation demonstration must be included in your notification of compliance status report. Third, subtract the estimated emissions from the inlet mass flow rate of total PSHAP and SHAP to the equalization unit to estimate the total PSHAP and SHAP load to the activated sludge unit. Fourth, determine the fraction biodegraded in the activated sludge unit using the procedures specified in 40 CFR 63.145(h). Note that you may assume all of the PSHAP and SHAP entering the activated sludge unit is biodegraded (*i.e.*, F_{bio}=1) if the biological treatment unit meets the definition of an ''enhanced biological treatment unit'' and at least 99 percent by weight of the total PSHAP and SHAP at the inlet to the equalization unit are compounds on list 1 of table 36 in 40 CFR part 63, subpart G. Alternatively, if your wastewater contains only a small amount of PSHAP, you may elect to assume that none of it is biodegraded in the activated sludge unit (*i.e.*, f_{bio}=0). Finally, multiply together the fraction biodegraded and the HAP load at the inlet to the activated sludge unit. If this value is more than 90 percent of the load to the equalization unit, then you have demonstrated initial compliance.

We are also proposing to change the venting requirements for lift stations as part of this option. The final rule currently specifies that venting to the atmosphere is allowed for lift stations that are filled and emptied by gravity flow or that operate with no more than slight fluctuations in the liquid level, provided the vent pipe is at least 90 centimeters in length and 10.2 centimeters in nominal inside diameter. The proposed option would allow any openings necessary for proper venting of the lift station because we understand that the specified vent pipe criteria may be too small to allow for proper operation of large lift stations.

Requirements for all waste management units prior to the equalization unit, except for lift stations as noted above, are as specified in 40 CFR part 63, subpart G. Similarly, monitoring, recordkeeping, and reporting requirements for the activated sludge unit are unchanged from the requirements specified in 40 CFR part 63, subpart G.

We are proposing the new compliance option because we believe it will achieve comparable or better control than existing requirements. The 90 percent destruction efficiency is higher than the required fraction removed for most SHAP, particularly methanol, which is by far the most common SHAP. Furthermore, this destruction efficiency is likely comparable to the overall destruction that would be achieved if the emission limit were met using a design steam stripper, and effluent from the steam stripper were discharged to a sewer and biological treatment unit that

is not in compliance with 40 CFR part 63, subpart G.

C. Discarding Materials to Water or Wastewater

Section 63.132(f) of the HON, which is referenced from table 7 to subpart FFFF, states that liquid or solid organic materials (except for certain exempted materials) with HAP concentrations >10,000 ppmw may not be discarded to water or wastewater unless the receiving stream is treated as Group 1 wastewater. The concentration in this provision is consistent with the threshold for Group 1 wastewater in the HON. Since the thresholds for Group 1 wastewater streams in subpart FFFF differ from those in the HON, we are proposing to add a new paragraph (m) in 40 CFR 63.2485 to revise the meaning of 40 CFR 63.132(f) for the purposes of subpart FFFF. To match the threshold for Group 1 wastewater specified in 40 CFR 63.2485(c), as modified in amendments described above, the proposed amendment would specify that 40 CFR 63.132(f) applies to materials with a concentration greater than 30,000 ppmw of total PSHAP and SHAP or greater than 10,000 ppmw of PSHAP.

D. Compliance Requirements

We are proposing to add two requirements in new 40 CFR 63.2485(o) to make the recordkeeping requirements for monitoring devices used with control devices for wastewater emissions consistent with the requirements for the same monitoring devices used with control devices for other emissions. First, we are proposing to require that you keep records of all periods during which a pilot flame monitor is not operating. This record is required in 40 CFR 63.998(c)(ii)(C), but it is not included in the referenced sections of subpart G that specify requirements for wastewater systems. Second, we are proposing to require that you keep records as specified in 40 CFR 63.998(c)(1) for CPMS used with nonflare control devices because comparable records are not required in the referenced sections of subpart G. They are required in subpart A to part 63, but table 12 to subpart FFFF specifies that those sections of subpart A do not apply to subpart FFFF because subpart FFFF relies on comparable provisions in subpart SS of this part.

E. Definition of Wastewater

We are proposing three editorial changes to clarify the definition of ''wastewater.'' According to the current definition, water must be discarded from an MCPU through a ''single POD'' to be wastewater. We understand that this term has caused confusion because it could be interpreted to mean that an MCPU with multiple points of determination (POD) does not have wastewater. To clarify the requirement, we are proposing to delete the word ''single.'' The intended meaning is that all water-containing discharges through a single point from a given MCPU (*e.g.*, a recovery device) are considered to be a single wastewater stream.

Another part of the definition specifies concentrations of compounds in ''Tables 8 or 9.'' We are proposing to replace this phrase with ''Tables 8 and 9'' to clarify that the thresholds are based on the concentration of total PSHAP and SHAP, not the separate amounts of PSHAP and SHAP.

Finally, we are proposing to clarify the definition of wastewater by specifying that wastewater means process wastewater or maintenance wastewater. This language is also used in the definition of wastewater in the HON, and it clarifies that these are the only types of streams that are wastewater. Streams that are 100 percent organic by-product or waste are not wastewater because they contain no water.

VI. How are we proposing to amend the requirements for equipment leaks?

We are proposing to restructure the equipment leak requirements for existing sources to simplify applicability without impacting the overall level of control achieved by the leak detection and repair (LDAR) program for the MON. We are achieving this improvement by adopting a single beyond-the-floor standard covering both continuous and batch process vents consisting of the requirements in 40 CFR part 63, subpart UU, except that you may elect to comply with sensory monitoring requirements for connectors. This consolidated approach differs from the final rule, which requires compliance with the LDAR program specified in 40 CFR part 63, subpart UU, if an MCPU has any continuous process vents (i.e., a beyond-the-floor requirement), and it requires compliance with the LDAR program in 40 CFR part 63, subpart TT, (i.e., the MACT floor) for MCPU that have no continuous process vents.[3] The net effect of these changes is to eliminate the requirement of EPA Method 21 monitoring of connectors for processes with a continuous process vent, requiring sensory monitoring instead, while simultaneously lowering the detection limit for pumps and valves.

We decided to propose these changes after we reanalyzed the data in light of an alternative beyond-the floor standard suggested by Petitions.[4]

As with the analysis used to select the program in the final rule, we also looked at more stringent alternatives, including requiring adoption of 40 CFR part, subpart UU, for all vents, but for this industry the incremental reductions are marginal. Accordingly, we rejected adopting an even tighter beyond-the-floor standard.

We believe that overall these revisions will reduce regulatory burdens. While the lower leak definition should result in identification of additional leaking components in batch processes, thus requiring additional time and materials to repair leaking valves and pumps this increased burden should be more than offset by the decrease in burden achieved by eliminating instrument monitoring for connectors in processes with continuous process vents. Furthermore, some facilities with batch processes are likely to experience a reduction in burden associated with complying with the equipment leak requirements because they also have processes with continuous process vents.

Another change under the proposed amendments to the equipment leak requirements is that you would not be required to develop an initial list of connector identification numbers as otherwise required in 40 CFR 63.1022(b)(1). We are proposing this change to the connector identification requirements because 40 CFR 63.1029 does not require you to calculate the percentage of all connectors that are leaking, and it does not include any other requirements that depend on an identification of specific connectors.

VII. How are we proposing to amend the recordkeeping and reporting requirements?

A. Processes With Uncontrolled Emissions Below the Thresholds for Control

We are proposing a number of changes to the recordkeeping

[3] The LDAR program in 40 CFR part 65, subpart F, the Consolidated Federal Air Rule (CAR), is also an option for any process. The proposed amendments to 40 CFR 63.2480 include comparable exceptions to the requirements for connectors for the CAR.

[4] A number of Petitioners argued that in light of *Arteva Specialties S.R.R.L., d/b/a KoSa* v. *EPA*, 323 F.3d 1088, 1092 (D.C. Cir. 2003), we must review impacts of LDAR monitoring requirements on an individual component basis and not on an LDAR program basis. They urged that we adopt the standard we are proposing today on the basis of such an analysis. While we disagree with Petitioner's assessment of Arteva, we note that if their position were correct the standard we are proposing today would be identical.

requirements in 40 CFR 63.2525(e) to clarify the requirements and reduce the burden associated with ongoing compliance demonstrations for processes that do not meet the annual mass emission rate thresholds for control of process vent emissions. The final rule currently requires four records for a process if either uncontrolled organic HAP emissions from the sum of all batch process vents within the process are less than 10,000 lb/yr (i.e., Group 2 batch process vents) or uncontrolled hydrogen halide and halogen HAP emissions from the sum of all batch and continuous process vents are less than 1,000 lb/yr. The four records are: (1) A record of the day on which each batch was completed; (2) a record of whether each batch operated was considered a standard batch; (3) the estimated uncontrolled and controlled emissions for each nonstandard batch; and (4) records of the daily 365-day rolling summation of emissions, or alternative records that correlate to the emissions (such as the cumulative number of batches). No records are required if you document in your notification of compliance status report that the process does not process, use, or produce HAP.

After re-examining these requirements, we determined that recordkeeping could be eliminated where emissions from a Group 2 batch vent are being controlled as if they are being emitted from a Group 1 batch process vent. In such case, keeping records to demonstrate that you are below the thresholds is necessary. To implement this change, we are amending 40 CFR 63.987 to provide that you need not comply with the reporting requirements if either of two conditions are met. One of these conditions is if you control Group 2 batch process vents using a flare that meets the requirements of 40 CFR 63.987. There is no need in this case to keep records demonstrating that emissions remain below the threshold for control because you would have been complying with the requirements for Group 1 batch process vents at all times, i.e., you are in fact controlling emissions from the process with a flare. The second condition under which no recordkeeping would be required is if you control Group 2 batch process vents using a control device that meets the requirements for Group 1 vents specified in table 2 to subpart FFFF and for which your determination of worst case for initial compliance includes the contribution of all Group 2 batches. In this case, just like when the control device is a flare, the emissions are always controlled as if they are from Group 1 vents. Thus, there is no need to maintain records that show whether or not the emissions remain below the threshold for control.

We also determined that it is appropriate to reduce recordkeeping requirements under circumstances where we can be confident that the relevant thresholds cannot be exceeded. Specifically, we believe that recordkeeping and reporting are appropriate where: (1) If non-reactive organic HAP usage is less than 10,000 lb/yr (i.e., solvents and impurities in raw materials that pass through the process without participating in reactions), and (2) if total uncontrolled organic HAP emissions from the batch process vents in an MCPU are less than 1,000 lb/yr.

We are proposing two changes that would reduce the initial and ongoing compliance burden for processes with total non-reactive organic HAP usage less than 10,000 lb/yr. First, we are proposing to add a new 40 CFR 63.2460(b)(7) to specify that, as an alternative to determining the uncontrolled batch process vent emissions, you may elect to document in your notification of compliance status report that the non-reactive organic HAP usage is less than 10,000 lb/yr. We are proposing this change to address impurities. There is no need to calculate the emissions if the total non-reactive HAP usage itself is less than the emissions threshold, and the MCPU does not process, use, or produce any other organic HAP. The second proposed amendment would reduce the recordkeeping requirements specified in 40 CFR 63.2525(e). If non-reactive organic HAP usage is expected to be less than 10,000 lb/yr, then simply tracking the consumption of the HAP material would be sufficient to demonstrate compliance with this threshold. Therefore, the proposed amendments would require you to keep records of the amount of non-reactive organic HAP material used and to calculate the daily rolling annual sum of the amount used; you would be allowed to collect and maintain the necessary data for up to one month before actually performing each of the daily calculations. In a new 40 CFR 63.2520(e)(5)(iv), the proposed amendments also would require you to include records for each calculation that shows usage exceeded 10,000 lb/yr in your next compliance report. If you exceed the 10,000 lb/yr usage threshold, you must begin keeping the standard records for Group 2 batch process vents for at least one year. After at least 1 year with usage below 10,000 lb, you could return to recording only usage. We limited this option to non-reactive HAP to keep the recordkeeping simple.

We recognize that many MCPU may have only trace amounts of HAP, yet they still generate emissions from batch operations that exceed either the 50 ppmv or 200 lb/yr threshold in the definition of a batch process vent. Some of these MCPU also may have estimated emissions well below the 10,000 lb/yr threshold for Group 1 batch process vents. As the final rule is currently written, you are required to keep the records specified in 40 CFR 63.2525(e) regardless of the actual annual emission rate from the batch process vents. We have determined that these records are unnecessary if the anticipated emissions are sufficiently low because it would be virtually impossible to exceed the 10,000 lb/yr threshold by operating nonstandard batches. Therefore, we are proposing to add a provision in 40 CFR 63.2525(e) that reduces the recordkeeping burden for MCPU with anticipated batch process vent emissions less than 1,000 lb/yr. For these MCPU you would be required to document in your notification of compliance status report that the total uncontrolled organic HAP emissions from the batch process vents in the MCPU will be less than 1,000 lb/yr for the anticipated number of batches operated. You would also be required to keep records of the number of batches operated and to calculate a daily rolling annual sum of the batches operated. Similar to the proposed amendment for MCPU with non-reactive organic HAP usage rates less than 10,000 lb/yr, you would be allowed to collect the necessary data for up to one month before performing all of the required daily calculations. Finally, you would be required to include the applicable records in your next compliance report for each calculation that shows the actual number of batches operated exceeds the number specified in your notification of compliance status report. If any record shows you exceeded the 1,000 lb/yr threshold, you would be required to begin keeping the standard records for Group 2 batch process vents for at least 1 year with emissions less than 1,000 lb. We selected the level of 1,000 lb/yr because we believe it is high enough to eliminate unnecessary recordkeeping for processes with clearly minimal emissions from standard batches while still providing an ample margin of safety to ensure that nonstandard batches and increased production rates do not cause the process to exceed the 10,000 lb/yr threshold for Group 1 batch process vents.

As currently written, 40 CFR 63.2525(e) does not clearly specify what records should be kept when a process emits hydrogen chloride and halogen HAP from continuous operations because all of the required records relate to batch operations. To clarify this requirement, our final proposed amendment to 40 CFR 63.2525(e) is to add a provision that would require you to keep records of the number of hours of operation for such processes. In addition, you would need to document in your notification of compliance status report the number of hours per year for continuous operations plus the number of batches for batch operations that corresponds to emissions of 1,000 lb/yr. You would be required to include the applicable records in your compliance report for each calculation that shows the actual hours per year exceeds the hours per year specified in your notification of compliance status report.

B. Standard and Nonstandard Batches

We understand there is some confusion about ''standard batches'' and ''nonstandard batches.'' We are not proposing changes to the definitions of standard batch and nonstandard batch or to relevant recordkeeping requirements; however, we want to take this opportunity to explain how we expect the concept of standard and nonstandard batches to be used.

A standard batch is a batch process that is operated within an acceptable range of operating conditions. Numerous operating characteristics and other processing variables affect emissions from a process. Typically, the actual values of these characteristics and variables for successful batches will vary within some range from one batch to the next. As a result, the actual emissions will also vary from batch to batch. Demonstrating compliance by calculating emissions for each batch based on the batch-specific characteristics would be unnecessarily burdensome. Therefore, the final rule specifies that you may develop a standard batch to represent typical batches with a single emissions estimate. The uncontrolled and controlled emissions for each emission episode in a standard batch must be estimated based on the values within these ranges that result in the highest level of emissions. The operating ranges and the calculated emissions become part of the operating scenario for the process. These results also are used in demonstrating initial compliance. Nonstandard batches are batches that operate outside of the documented ranges, provided the variation is due to a reasonably anticipated fluctuation or event, not a malfunction or an intended permanent change. For example, a nonstandard batch occurs when additional processing, or processing at different operating conditions, must be conducted (perhaps in response to a malfunction) to produce a product that is normally produced under conditions described by the standard batch. Emissions for each nonstandard batch must be estimated and recorded. Note that operating a nonstandard batch does not mean you have to create a new operating scenario. To clarify this point, we are proposing to state in 40 CFR 63.2520(e)(10)(i) that a nonstandard batch does not constitute a process change.

To demonstrate initial compliance with some of the requirements for batch process vents, 40 CFR 63.2525(d) and (e) require records of the uncontrolled and controlled emissions for standard batches. To demonstrate ongoing compliance, records of whether each batch is a standard or nonstandard batch and estimated uncontrolled and controlled emissions for each nonstandard batch are required.

One way of achieving an overall process-based percent reduction in batch process vent emissions in accordance with table 2 to subpart FFFF is to over control some vents and under control others. When this strategy is used, you must monitor operating parameters to demonstrate that the intended percent reductions are being achieved by individual control device. However, information on nonstandard batches is needed to demonstrate ongoing compliance with the overall percent reduction requirement. Similarly, emission estimates are needed for each standard and nonstandard batch to demonstrate ongoing compliance for a process if you document in your notification of compliance status report that the process has uncontrolled organic HAP emissions (from batch process vents) less than 10,000 lb/yr, or uncontrolled hydrogen halide and halogen HAP emissions (from both batch and continuous operations) less than 1,000 lb/yr. The concept of standard batches and nonstandard batches and the related recordkeeping requirements in 40 CFR 63.2525(d) and (e) are used to demonstrate compliance in these situations. Note that you must develop standard and nonstandard batches only when complying with the specific process vent provisions identified above in this paragraph. If you elect to comply with other options (e.g., by using a flare or controlling all batch process vents with the same control device), you do not need to develop standard and nonstandard batches.

Our intent was that you have flexibility in determining how to identify and record nonstandard batches. The objective should be to focus on the critical parameters in the standard batch that, if exceeded, can affect emissions or control efficiency. In addition, we are interested in changes that increase emissions from the process; decreases do not need to be estimated and recorded. For example, if the recorded duration of the batch, the measured mass of the batch, and the monitored process condenser exit temperature are each less than the values defined in the standard batch, and these are the critical parameters affecting HAP emissions, then the batch is considered to be standard. In other cases, tracking control device parameters, such as condenser temperature, may be an adequate means of detecting nonstandard batches. Insignificant episodes do not require any further monitoring for ''nonstandard'' during the operating period.

C. Operating Logs

We are proposing to revise 40 CFR 63.2525(c) to require a schedule or log of operating scenarios (i.e., ''operating logs'') only for processes that have batch vents. We are also proposing related changes to the compliance reporting requirements in 40 CFR 63.2520(e)(5)(ii)(C) and (e)(5)(iii)(K) to clarify that operating logs apply only for processes that have batch vents. These proposed changes are intended to minimize the recordkeeping and reporting burden without sacrificing the collection of information needed to demonstrate compliance.

An operating log is any paper or electronic recordkeeping system that tracks the implementation of operating scenarios as an indicator of which processes are operating on any given day. When you experience a deviation from an emission limit, operating limit, or work practice standard, you must include the applicable portion of the log in your compliance report so that EPA or the delegated authority understands which process(es) were operating during the deviation. For example, when you have a deviation from an operating limit for a control device or wastewater treatment unit that is shared by more than one process, an operating log would identify which process (or processes) was operating during the deviation.

We have decided that processes that consist entirely of continuous operations do not need to be included

in an operating log because such processes generally operate all of the time. Furthermore, startup and shutdown records may serve the same purpose, provided excess emissions (i.e., a deviation) occur during the startup or shutdown. Although the proposed change means you would not be required to include such a process in an operating log, it does not prohibit you from including it. In the absence of information to the contrary in an operating log or startup and shutdown records, our default assumption will be that each process that consists only of continuous operations was operating during deviations.

D. Reporting Requirements for Emission Points That Change From Group 2 to Group 1

Section 63.2520(e)(10)(ii)(C) of the promulgated rule requires a 60-day advance notification for whenever you change an emission point from Group 2 to Group 1. The purpose of the advance notification is to provide EPA with the opportunity to evaluate whether the change in status is consistent with compliance requirements. Since promulgation we have determined that changing batch process vents to Group 1 status after at least 365 days of operation as Group 2 will always be acceptable because the requirement to have uncontrolled emissions less than 10,000 lb/yr would always be met. Thus, we are proposing to delete the 60-day advance notification requirement for batch process vents. Although the proposed amendment would delete the advance notification requirement, the change in status would still have to be documented in a revised operating scenario and submitted in the applicable compliance report in accordance with 40 CFR 63.2520(e)(7) and (e)(10)(i).

VIII. How are we proposing to change requirements that apply when requirements in subpart FFFF and another rule apply to the same equipment?

Section 63.2535(k) specifies compliance options when equipment subject to 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, is also subject to equipment leak provisions in 40 CFR part 63, subpart FFFF. We are proposing two changes to this paragraph. First, as a result of the proposed changes to the definition of continuous process vent, we are proposing to delete the second sentence in this paragraph because it is no longer applicable (see discussion earlier in this preamble). Therefore, this paragraph would only indicate that you may elect to apply subpart FFFF to all equipment subject to either of the other two subparts as well as subpart FFFF. However, it is possible that some equipment that is subject to 40 CFR part 63, subpart V or VV, will be in contact with fluid that only contains volatile organic compounds (VOC) and would not otherwise be subject to the MON. To clarify the procedures in such situations, our second proposed change is to add a statement that would require you to consider all total organic compounds, minus methane and ethane, as if they were organic HAP for the purposes of compliance with this provision. This language is consistent with the language in 40 CFR 63.2535(h), which specifies procedures for dealing with overlap between subpart FFFF and the new source performance standards (NSPS) in 40 CFR part 60, subparts DDD, III, NNN, and RRR.

IX. What miscellaneous technical corrections are we proposing?

We are proposing to edit several provisions to clarify our intent. These proposed changes are described in table 1 of this preamble.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART FFFF

Subpart FFFF	Description of proposed correction
40 CFR 63.2435(b) introductory text.	We are proposing to replace the phrase ''product transfer rack'' with ''transfer rack.'' The change is needed to clarify that, like in the HON, the requirements for transfer racks apply to all materials from the process unit that are loaded at the transfer rack. It is not limited to intended products. This change also will make the language in this section consistent with the language throughout the rest of 40 CFR part 63, subpart FFFF.
40 CFR 63.2435(b)(1)(i) and (ii)	We are proposing to replace the phrase ''organic chemical or chemicals'' with ''organic chemical(s)'' to clarify that the final rule applies to the organic chemicals in the specified SIC and NAICS code categories.
40 CFR 63.2445(c)	We are proposing to edit the first sentence in 40 CFR 63.2445(c) to clarify that due dates for notifications are specified in 40 CFR 63.2515 and in subpart A of 40 CFR part 63 (*i.e.*, the General Provisions). This change also makes the sentence consistent with language used in other NESHAP.
40 CFR 63.2450(h)	We are proposing to revise the first sentence in this section to clarify that the design evaluation option for small control devices applies only to control devices that are used to comply with an emission limit for process vents or transfer racks. This option does not apply to control devices for storage tanks and wastewater systems because referenced provisions in subparts G and SS, 40 CFR part 63, already allow a design evaluation for any control devices used to control these emissions.
40 CFR 63.2450(k)(3)	We are proposing changes to clarify that if you elect to measure caustic strength as an alternative to measuring pH, then you must also record the caustic strength measurements instead of pH measurements.
40 CFR 63.2450(k)(4)	We are proposing changes to this section to clarify that if you elect to monitor the inlet temperature and the catalyst activity level, then you must record only the inlet temperature, not both the inlet and outlet temperatures and the temperature difference across the catalyst bed.
40 CFR 63.2450(k)(5)	We are proposing to add this section to require monitoring of influent liquid flow, determination of gas flow, and recordkeeping of the liquid-to-gas ratio for absorbers. This monitoring would be in addition to the measuring the scrubbing liquid temperature and specific gravity, and it would ensure proper operation of the tower and that sufficient scrubbing fluid is circulated to achieve the intended reductions.
40 CFR 63.2460(c)(2)(iii)	We are proposing revisions to clarify that the option to calculate controlled emissions from a condenser apply only if you are complying with a percent reduction standard, not an outlet concentration limit.
40 CFR 63.2465(b)	We are proposing to replace the reference to ''40 CFR 63.1257(d)(2)(i) and (ii)'' with a reference to ''40 CFR 63.1257(d)(2)(i) and/or (ii), as appropriate.'' This change clarifies that uncontrolled HCl and hydrogen halide emissions from each process vent may be estimated using the appropriate procedures in either of the referenced paragraphs.

TABLE 1.—TECHNICAL CORRECTIONS TO SUBPART FFFF—Continued

Subpart FFFF	Description of proposed correction
40 CFR 63.2470(b) and entries 1.a.iii and 1.b.iv to Table 2 to subpart FFFF.	We are proposing to specify in table 2 to subpart FFFF rather than in 40 CFR 63.2470(b) that you must comply with 40 CFR 63.984 if you reduce HAP emissions by routing to a fuel gas system or process. Therefore, we are proposing to delete and reserve 40 CFR 63.2470(b). The goal of these changes is to enhance clarity of the rule; the requirements are unchanged.
40 CFR 63.2475(c) and entry 1.c in Table 5 to subpart FFFF.	We are proposing to specify in table 5 to subpart FFFF rather than in 40 CFR 63.2475(c) that you must comply with 40 CFR 63.984 if you reduce HAP emissions by routing to a fuel gas system or process. Therefore, we are proposing to delete 40 CFR 63.2475(c). The goal of these changes is to enhance clarity of the final rule; the requirements are unchanged.
40 CFR 63.2520(c)(4)	We are proposing to add a statement specifying that the requirement to submit data and rationale used to support engineering assessments does not apply to engineering assessments that show an emission stream from a batch operation contains less than 50 ppmv of HAP or if you use previous test data in your engineering assessment.
40 CFR 63.2520(e)(10)(i)	This section currently requires you to submit a notification of process change whenever you make a change to any of the information submitted in the notification of compliance status report. We are proposing a revision to this section to clarify that the notification requirement applies to changes in information submitted in previous compliance reports as well as the notification of compliance status report.
40 CFR 63.2550(i)	We are proposing to add a definition for the term ''halogen atoms'' to clarify that this term means chlorine and fluorine when it is used in the definition of ''halogenated vent stream.'' The concept of a halogenated vent stream is used for emission streams that are controlled using combustion devices that could generate inorganic combustion products that are HAP (*i.e.*, HCl, chlorine, and hydrogen fluoride). Although bromine is also a halogen, it is not included in the definition of halogen atoms because its products of combustion (bromine and hydrogen bromide) are not HAP.
Table 2 to subpart FFFF	We are proposing to edit the language in item 2.c of table 2 to subpart FFFF to clarify our intent that flares are an option for controlling emissions from batch process vents. The revised language does not change the available compliance options.
Entry 1.b in Table 4 to subpart FFFF.	We are proposing to correct several typesetting errors. The maximum true vapor pressure threshold should be <76.6 kilopascals, not ≤76.6 kilopascals. The concentration limits for total organic compounds (TOC) or organic HAP and for hydrogen halide and halogen HAP should be ≤20 ppmv, not <20 ppmv.
Table 12 to subpart FFFF	We are proposing changes in the explanations column for many of the entries in table 12 to subpart FFFF to specify that requirements for continuous monitoring systems (CMS) in the General Provisions apply to all CEMS, not just CEMS used to comply with the alternative standard. This correction is needed because CEMS may also be used to monitor the outlet pollutant concentration to demonstrate ongoing compliance with a percent reduction emission limit. The provisions in 40 CFR part 63, subpart SS that apply to control device parameter monitors that are used to demonstrate compliance with a percent reduction emission limit do not apply to CEMS. Therefore, the provisions for CMS in the General Provisions must apply to CEMS that are used in this application as well as to CEMS that are used to comply with the alternative standard.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Although OMB has notified EPA that it considers this a ''significant regulatory action'' under Executive Order 12866, OMB has waived review of the proposed amendments.

B. Paperwork Reduction Act

The proposed amendments impose no new information collection requirements on the industry. The proposed amendments would give owners and operators options to some requirements. For example, biofilters are proposed as an option to meet the emission limit for batch process vents. Other proposed changes may result in a minor reduction in the burden. For example, one proposed option would allow an owner or operator to conduct sensory monitoring as an alternative to instrument monitoring of connectors. Another proposed change would eliminate the requirement to include data and results from an engineering assessment of emissions from batch operations in the precompliance report if the HAP concentration is determined to be less than 50 ppmv. Since all of these changes are either options or have the potential to result in minor reductions in the information collection burden, the ICR has not been revised.

The OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0533 (EPA ICR number 1969.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. EPA (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. Include the ICR or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

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

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

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business ranging from up to 500 employees to up to 1,000 employees, depending on the NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The maximum number of employees to be considered a small business for each NAICS code is shown in the preamble to the proposed rule (67 FR 16178).

After considering the economic impacts of today's proposed amendments on small entities, I certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed amendments include additional compliance options for process tanks, batch process vents, equipment leaks, and SHAP-containing wastewater that provide small entities with greater flexibility to comply with the standards. Other proposed amendments potentially reduce the recordkeeping and reporting burden. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires 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 per 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.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual costs of the proposed amendments for any year is estimated to be about $75 million, and the proposed amendments do not add new requirements that would increase that cost. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The proposed amendments do not have federalism implications. They 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed amendments do not have tribal implications, as specified in Executive Order 13175. The proposed amendments provide an owner or operator with several additional options for complying with the emission limits and other requirements in the rule. Therefore, the proposed amendments 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. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

Executive Order 13045 (62 FR 1985, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to the Executive Order because they are based on technology performance and not health or safety risks.

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

The proposed amendments do not constitute a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because the proposed amendments are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

During the rulemaking, the EPA conducted searches to identify voluntary consensus standards in addition to EPA test methods referenced by the final rule. The search and review results have been documented and placed in the docket for the NESHAP (Docket OAR–2003–0121). The proposed amendments do not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for the proposed amendments.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 30, 2005.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart FFFF—[Amended]

2. Section 63.2435 is amended as follows:

a. Revising ''product transfer racks'' to read ''transfer racks'' in paragraph (b) introductory text;

b. Revising paragraphs (b)(1)(i) and (ii);

c. Revising paragraph (c) introductory text;

d. Revising paragraph (c)(4); and

e. Adding new paragraph (c)(7).

The additions and revisions read as follows:

§ 63.2435 Am I subject to the requirements of this subpart?

* * * * *

(b) * * *

(1) * * *

(i) An organic chemical(s) classified using the 1987 version of SIC code 282, 283, 284, 285, 286, 287, 289, or 386, except as provided in paragraph (c)(5) of this section.

(ii) An organic chemical(s) classified using the 1997 version of NAICS code 325, except as provided in paragraph (c)(5) of this section.

* * * * *

(c) The requirements in this subpart do not apply to the operations specified in paragraphs (c)(1) through (7) of this section.

* * * * *

(4) Fabricating operations (such as spinning or compressing a solid polymer into its end use); compounding operations (in which blending, melting, and resolidification of a solid polymer product occur for the purpose of incorporating additives, colorants, or stabilizers); and extrusion and drawing operations (converting an already produced solid polymer into a different shape by melting or mixing the polymer and then forcing it or pulling it through an orifice to create an extruded product). An operation is not exempt if it involves processing with HAP solvent or if an intended purpose of the operation is to remove residual HAP monomer.

* * * * *

(7) Carbon monoxide production.

* * * * *

3. Section 63.2445 is amended as follows:

a. Revising paragraph (b) and the first sentence in paragraph (c); and

b. Adding new paragraphs (d), (e), and (f).

The additions and revisions read as follows:

§ 63.2445 When do I have to comply with this subpart?

* * * * *

(b) If you have an existing source on November 10, 2003, you must comply with the requirements for existing sources in this subpart no later than May 10, 2008.

(c) You must meet the notification requirements in § 63.2515 according to the dates specified in that section and in subpart A of this part 63. * * *

(d) If you have a Group 2 emission point that becomes a Group 1 emission point after the compliance date for your affected source, you must comply with the Group 1 requirements beginning on the date the switch occurs. A performance test (or design evaluation, if applicable) must be conducted within 150 days after the switch occurs.

(e) If, after the compliance date for your affected source, hydrogen halide and halogen HAP emissions from process vents in a process increase to more than 1,000 lb/yr, or HAP metals emissions from a process at a new affected source increase to more than 150 lb/yr, you must comply with the applicable emission limits specified in Table 3 to this subpart and the associated compliance requirements beginning on the date the emissions exceed the applicable threshold. A performance test (or design evaluation, if applicable) must be conducted within 150 days after the switch occurs.

(f) If you have a small control device for process vent or transfer rack emissions that becomes a large control device, as defined in § 63.2550(i), you must comply with monitoring and associated recordkeeping and reporting requirements for large control devices beginning on the date the switch occurs. A performance test must be conducted within 150 days after the switch occurs.

4. Section 63.2450 is amended as follows:

a. Revising the first sentence in paragraph (h);

b. Revising paragraph (k) introductory text, paragraph (k)(3), paragraph (k)(4) introductory text, and paragraph (k)(4)(i); and

c. Adding new paragraphs (k)(4)(iv) and (k)(5).

The additions and revisions read as follows:

§ 63.2450 What are my general requirements for complying with this subpart?

* * * * *

(h) *Design evaluation.* To determine the percent reduction of a small control device that is used to comply with an emission limit specified in Table 1, 2, 3, or 5 to this subpart, you may elect to conduct a design evaluation as specified in § 63.1257(a)(1) instead of a performance test as specified in subpart SS of this part 63. * * *

* * * * *

(k) *Continuous parameter monitoring.* The provisions in paragraphs (k)(1) through (4) of this section apply in addition to the requirements for continuous parameter monitoring system (CPMS) in subpart SS of this part 63.

* * * * *

(3) As an alternative to measuring and recording pH as specified in §§ 63.994(c)(1)(i) and 63.998(a)(2)(ii)(D), you may elect to continuously monitor and record the caustic strength of the scrubber effluent.

(4) As an alternative to the inlet and outlet temperature monitoring requirements for catalytic incinerators as specified in § 63.988(c)(2) and the related recordkeeping requirements specified in § 63.998(a)(2)(ii)(B)(*2*) and (c)(2)(ii), you may elect to comply with the requirements specified in paragraphs (k)(4)(i) through (iv) of this section.

(i) Monitor and record the inlet temperature as specified in subpart SS of this part 63.

* * * * *

(iv) Recording the downstream temperature and temperature difference across the catalyst bed as specified in § 63.998(a)(2)(ii)(B)(*2*) and (b)(2)(ii) is not required.

(5) In addition to the monitoring and recordkeeping requirements specified in §§ 63.990(c)(1), 63.993(c)(1), and 63.998(a)(2)(ii)(C) for absorbers, you must use a flow meter capable of providing a continuous record of the absorber influent liquid flow, determine gas stream flow using one of the procedures specified in § 63.994(c)(1)(ii)(A) through (D), and record the absorber liquid-to-gas ratio averaged over the time period of any performance test.

* * * * *

5. Section 63.2460 is amended as follows:

a. Revising paragraph (b) introductory text and paragraphs (b)(1) and (b)(2);

b. Redesignating paragraph (b)(4) as paragraph (b)(5) and amending newly redesignated (b)(5) introductory text by revising ''paragraph (b)(4)(i), (ii), or (iii)'' to read ''paragraph (b)(5)(i), (ii), or (iii)'';

c. Adding new paragraphs (b)(4), (b)(6), and (b)(7);

d. Revising paragraph (c) introductory text, paragraph (c)(1), paragraph (c)(2)(iii), and the first sentence in paragraph (c)(2)(v); and

e. Adding new paragraphs (c)(8) and (c)(9).

The additions and revisions read as follows:

§ 63.2460 What requirements must I meet for batch process vents?

* * * * *

(b) *Group status.* If a process has batch process vents, as defined in § 63.2550, you must determine the group status of the batch process vents by determining and summing the uncontrolled organic HAP emissions from each of the batch process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and (ii), except as specified in paragraphs (b)(1) through (7) of this section.

(1) To calculate emissions caused by the heating of a vessel without a process condenser to a temperature lower than the boiling point, you must use the procedures in § 63.1257(d)(2)(i)(C)(3).

(2) To calculate emissions from depressurization of a vessel without a process condenser, you must use the procedures in § 63.1257(d)(2)(i)(D)(10).

* * * * *

(4) To calculate uncontrolled emissions when a vessel is equipped with a process condenser, you must use the procedures in § 63.1257(d)(3)(i)(B).

* * * * *

(6) You may change from Group 2 to Group 1 in accordance with either paragraph (b)(6)(i) or (ii) of this section. You must comply with the requirements of this section and submit the test report in the next Compliance report.

(i) You may switch at anytime after operating as Group 2 for at least one year so that you can show compliance with the 10,000 lb/yr threshold for Group 2 batch process vents for at least 365 days before the switch. You may elect to start keeping records of emissions from Group 2 batch process vents before the compliance date. Report a switch based on this provision in your next compliance report in accordance with § 63.2520(e)(10)(i).

(ii) If the conditions in paragraph (b)(6)(i) of this section are not applicable, you must provide a 60-day advance notice in accordance with § 63.2520(e)(10)(ii) before switching.

(7) As an alternative to determining the uncontrolled organic HAP emissions as specified in § 63.1257(d)(2)(i) and (ii), you may elect to demonstrate that non-reactive organic HAP usage in a process is less than 10,000 lb/yr. You must provide data and supporting rationale in your notification of compliance status report explaining why the non-reactive organic HAP usage will be less than 10,000 lb/yr. You must keep records of the non-reactive organic HAP usage as specified in § 63.2525(e)(2) and include

information in compliance reports as specified in § 63.2520(e)(5)(iv).

(c) Exceptions to the requirements in subparts SS and WW of this part 63 are specified in paragraphs (c)(1) through (9) of this section.

(1) *Process condensers.* Process condensers, as defined in § 63.2550(i), are not considered to be control devices for batch process vents. You must determine whether a condenser is a control device for a batch process vent or a process condenser from which the uncontrolled HAP emissions are evaluated as part of the initial compliance demonstration for each MCPU and report the results with supporting rationale in your notification of compliance status report.

(2) * * *

(iii) As an alternative to conducting a performance test or design evaluation to demonstrate initial compliance with a percent reduction requirement for a condenser, you may determine controlled emissions using the procedures specified in § 63.1257(d)(3)(i)(B).

* * * * *

(v) If a process condenser is used for any boiling operations, you must demonstrate that it is properly operated according to the procedures specified in § 63.1257(d)(2)(i)(C)(4)(ii) and (d)(3)(iii)(B), and the demonstration must occur only during the boiling operation. * * *

* * * * *

(8) *Terminology.* When the term ''storage vessel'' is used in subpart WW of this part 63, the term ''process tank,'' as defined in § 63.2550(i), applies for the purposes of this section.

(9) *Requirements for a biofilter.* If you use a biofilter to meet either the 95 percent reduction requirement or outlet concentration requirement specified in Table 2 to this subpart, you must meet the requirements specified in paragraphs (c)(9)(i) through (iv) of this section.

(i) *Operational requirements.* The biofilter must be operated at all times when emissions are vented to it.

(ii) *Performance tests.* To demonstrate initial compliance, you must conduct a performance test according to the procedures in § 63.997 and paragraphs (c)(9)(ii)(A) through (D) of this section. The design evaluation option for small control devices is not applicable if you use a biofilter.

(A) Keep up-to-date, readily accessible continuous records of either the biofilter bed temperature averaged over the full period of the performance test or the outlet total organic HAP or TOC concentration averaged over the full period of the performance test. Include these data in your notification of compliance status report as required by § 63.999(b)(3)(ii).

(B) Record either the percent reduction of total organic HAP achieved by the biofilter determined as specified in § 63.997(e)(2)(iv) or the concentration of TOC or total organic HAP determined as specified in § 63.997(e)(2)(iii) at the outlet of the biofilter, as applicable.

(C) If you monitor the biofilter bed temperature, you may elect to use multiple thermocouples in representative locations throughout the biofilter bed and calculate the average biofilter bed temperature across these thermocouples prior to reducing the temperature data to 15 minute (or shorter) averages for purposes of establishing operating limits for the biofilter. If you use multiple thermocouples, include your rationale for their site selection in your notification of compliance status report.

(D) Submit a performance test report as specified in § 63.999(a)(2)(i) and (ii). Include the records from paragraph (c)(9)(ii)(B) of this section in your performance test report.

(iii) *Monitoring requirements.* Use either a biofilter bed temperature monitoring device (or multiple devices) capable of providing a continuous record or an organic monitoring device capable of providing a continuous record. Keep records of temperature monitoring results as specified in § 63.998(b) and (c), as applicable. General requirements for monitoring and continuous temperature monitoring systems are contained in § 63.996, and requirements for using a CEMS are specified in § 63.2450(j) and Table 12 to this subpart. If you monitor temperature, the operating temperature range must be based on only the temperatures measured during the performance test; these data may not be supplemented by engineering assessments or manufacturer's recommendations as otherwise allowed in § 63.999(b)(3)(ii)(A). If you establish the operating range (minimum and maximum temperatures) using data from previous performance tests in accordance with § 63.996(c)(6), replacement of the biofilter media with the same type of media is not considered a process change under § 63.997(b)(1). You may expand your biofilter bed temperature operating range by conducting a repeat performance test that demonstrates compliance with the 95 percent reduction requirement or outlet concentration limit, as applicable.

(iv) *Repeat performance tests.* You must conduct a repeat performance test using the applicable methods specified in § 63.997 within 2 years following the previous performance test and within 150 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.

6. Section 63.2465 is amended by revising the section heading, paragraph (b), and paragraph (d) to read as follows:

§ 63.2465 What requirements must I meet for process vents that emit hydrogen halide and halogen HAP or HAP metals?

* * * * *

(b) If any process vents within a process emit hydrogen halide and halogen HAP, you must determine and sum the uncontrolled hydrogen halide and halogen HAP emissions from each of the process vents within the process using the procedures specified in § 63.1257(d)(2)(i) and/or (ii), as appropriate.

* * * * *

(d) To demonstrate compliance with the emission limit in Table 3 to this subpart for HAP metals at a new source, you must comply with paragraphs (d)(1) through (3) of this section.

(1) Determine the mass emission rate of HAP metals based on process knowledge, engineering assessment, or test data.

(2) Conduct an initial performance test of each control device that is used to comply with the emission limit for HAP metals specified in Table 3 to this subpart. Conduct the performance test according to the procedures in § 63.997. Use Method 29 of appendix A of 40 CFR part 60 to determine the HAP metals at the inlet and outlet of each control device, or use Method 5 of appendix A of 40 CFR part 60 to determine the total particulate matter at the inlet and outlet of each control device. You have demonstrated initial compliance if the overall reduction of either HAP metals or total PM from the process is greater than or equal to 97 percent by weight.

(3) Comply with the monitoring requirements specified in § 63.1366(b)(1)(xi) for each fabric filter used to control HAP metals.

§ 63.2470 [Amended]

7. Section 63.2470 is amended by removing and reserving paragraph (b).

§ 63.2475 [Amended]

8. Section 63.2475 is amended by removing paragraph (c).

9. Section 63.2480 is revised to read as follows:

§ 63.2480 What requirements must I meet for equipment leaks?

(a) You must meet each requirement in Table 6 to this subpart that applies to your equipment leaks, except as specified in paragraph (b) or (c) of this section.

(b) If you comply with subpart UU of this part 63, you may elect to comply with the provisions in paragraphs (b)(1) through (4) of this section as an alternative to the referenced provisions in subpart UU.

(1) The requirements for pressure testing in § 63.1036(b) may be applied to all processes, not just batch processes.

(2) For the purposes of this subpart, pressure testing for leaks in accordance with § 63.1036(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

(3) For an existing source, you are not required to develop an initial list of identification numbers for connectors as would otherwise be required under § 63.1022(b)(1).

(4) For connectors in gas/vapor and light liquid service at an existing source, you may elect to comply with the requirements in § 63.1029 for connectors in heavy liquid service, including all associated recordkeeping and reporting requirements, rather than the requirements of § 63.1027.

(c) If you comply with 40 CFR part 65, subpart F, you may elect to comply with the provisions in paragraphs (c)(1) through (6) of this section as an alternative to the referenced provisions in 40 CFR part 65, subpart F.

(1) The requirements for pressure testing in § 65.117(b) may be applied to all processes, not just batch processes.

(2) For the purposes of this subpart, pressure testing for leaks in accordance with § 65.117(b) is not required after reconfiguration of an equipment train if flexible hose connections are the only disturbed equipment.

(3) For an existing source, you are not required to develop an initial list of identification numbers for connectors as would otherwise be required under § 65.103(b)(1).

(4) You may elect to comply with the monitoring and repair requirements specified in § 65.108(e)(3) as an alternative to the requirements specified in § 65.108(a) through (d) for any connectors at your affected source.

(5) When 40 CFR part 65, subpart F refers to the implementation date specified in § 65.1(f), it means the compliance date specified in § 63.2445.

(6) When §§ 65.105(f) and 65.117(d)(3) refer to § 65.4, it means § 63.2525.

(7) When § 65.120(a) refers to § 65.5(d), it means § 63.2515.

(8) When § 65.120(b) refers to § 65.5(e), it means § 63.2520.

10. Section 63.2485 is amended by revising paragraph (a) and paragraphs (c)(1) through (3) and by adding new paragraphs (m), (n), and (o) to read as follows:

§ 63.2485 What requirements must I meet for wastewater streams and liquid streams within an MCPU?

(a) You must meet each requirement in Table 7 to this subpart that applies to your wastewater streams and liquid streams in open systems within an MCPU, except as specified in paragraphs (b) through (o) of this section.

* * * * *

(c) * * *

(1) The total annual average concentration of compounds in Table 8 to this subpart is greater than or equal to 10,000 ppmw at any flowrate, and the total annual load of compounds in Table 8 to this subpart is greater than or equal to 200 lb/yr.

(2) The total annual average concentration of compounds in Table 8 to this subpart is greater than or equal to 1,000 ppmw, and the annual average flowrate is greater than or equal to 1 l/min.

(3) The combined total annual average concentration of compounds in Tables 8 and 9 to this subpart is greater than or equal to 30,000 ppmw, and the combined total annual load of compounds in Tables 8 and 9 to this subpart is greater than or equal to 1 tpy.

* * * * *

(m) When § 63.132(f) refers to ''a concentration of greater than 10,000 ppmw of Table 9 compounds,'' it means ''a concentration of greater than 30,000 ppmw of total partially soluble HAP (PSHAP) and soluble HAP (SHAP) or greater than 10,000 ppmw of PSHAP'' for the purposes of this subpart.

(n) *Alternative requirements for wastewater that is Group 1 for soluble HAP only.* The option specified in this paragraph (n) applies to wastewater that is Group 1 for soluble HAP in accordance with paragraph (c)(3) of this section and is discharged to biological treatment. Except as provided in paragraph (n)(4) of this section, this option does not apply to wastewater that is Group 1 for partially soluble HAP in accordance with paragraph (c)(1), (2), or (4) of this section. For wastewater that is Group 1 for soluble HAP, you need not comply with §§ 63.133 through 63.137 for any equalization unit, neutralization unit, and/or clarifier prior to the activated sludge unit, and you need not comply with the venting requirements in § 63.136(e)(2)(ii)(A) for lift stations with a volume larger than 10,000 gal, provided you comply with the requirements specified in paragraphs (n)(1) through (3) of this section and all otherwise applicable requirements specified in Table 7 to this subpart. For this option, the treatment requirements in § 63.138 and the performance testing requirements in § 63.145 do not apply to the biological treatment unit, except as specified in paragraphs (n)(2)(i) through (iv) of this section.

(1) Wastewater must be hard-piped between the equalization unit, clarifier, and activated sludge unit. This requirement does not apply to the transfer between any of these types of units that are part of the same structure and one unit overflows into the next.

(2) Calculate the destruction efficiency of the biological treatment unit using Equation 1 of this section in accordance with the procedures described in paragraphs (n)(2)(i) through (vi) of this section. You have demonstrated initial compliance if E is greater than or equal to 90 percent.

$$E = \frac{(QMW_a - QMG_e - QMG_n - QMG_c)(F_{bio})}{QMW_a} \times 100 \qquad \text{(Eq. 1)}$$

Where:

E = Destruction efficiency of total PSHAP and SHAP for the biological treatment unit including the equalization unit, neutralization unit, and/or clarifier, percent

QMW_a = mass flow rate of total PSHAP and SHAP compounds entering the equalization unit (or whichever of the three types of units is first), kg/hr

QMG_e = mass flow rate of total PSHAP and SHAP compounds emitted from the equalization unit, kg/hr

QMG_n = mass flow rate of total PSHAP and SHAP compounds emitted from the neutralization unit, kg/hr

QMG_c = mass flow rate of total PSHAP and SHAP compounds emitted from the clarifier, kg/hr

F_{bio} = Site-specific fraction of PSHAP and SHAP compounds biodegraded in the biological treatment unit

(i) Include all PSHAP and SHAP compounds in both Group 1 and Group 2 wastewater streams from all MCPUs, except you may exclude any compounds that meet the criteria specified in § 63.145(a)(6)(ii) or (iii).

(ii) Conduct the demonstration under representative process unit and treatment unit operating conditions in accordance with § 63.145(a)(3) and (4).

(iii) Determine PSHAP and SHAP concentrations and the total wastewater flow rate at the inlet to the equalization unit in accordance with § 63.145(f)(1) and (2). References in § 63.145(f)(1) and (2) to RMR and AMR do not apply for the purposes of this section.

(iv) Determine F_{bio} for the activated sludge unit as specified in § 63.145(h), except as specified in paragraph (n)(2)(iv)(A) or (B) of this section.

(A) If the biological treatment process meets both of the requirements specified in § 63.145(h)(1)(i) and (ii), you may elect to replace the F_{bio} term in Equation 1 of this section with the numeral ''1.''

(B) You may elect to assume F_{bio} is zero for any compounds on List 2 of Table 36 in subpart G.

(v) Determine QMG_e, QMG_n, and QMG_c using EPA's WATER9 model or the most recent update to this model, and conduct testing or use other procedures to validate the modeling results.

(vi) Submit the data and results of your demonstration, including both a description of and the results of your WATER9 modeling validation procedures, in your notification of compliance status report as specified in § 63.2520(d)(2)(ii).

(3) As an alternative to the venting requirements in § 63.136(e)(2)(ii)(A), a lift station with a volume larger than 10,000 gal may have openings necessary for proper venting of the lift station. The size and other design characteristics of these openings may be established based on manufacturer recommendations or engineering judgment for venting under normal operating conditions. You must describe the design of such openings and your supporting calculations and other rationale in your notification of compliance status report.

(4) For any wastewater streams that are Group 1 for both PSHAP and SHAP, you may elect to meet the requirements specified in Table 7 to this subpart for the PSHAP and then comply with paragraphs (n)(1) through (3) of this section for the SHAP in the wastewater system. You may determine the SHAP mass removal rate, in kg/hr, in treatment units that are used to meet the requirements for PSHAP and add this amount to both the numerator and denominator in equation 1 of this section.

(o) *Compliance records.* (1) If you use a flare to meet a requirement specified in Table 7 to this subpart, you must keep records of the times and durations of all periods during which the pilot flame monitor is not operating. This information must be submitted in the compliance reports as specified in § 63.2520(e)(5)(iii)(A).

(2) For each CPMS used to monitor a nonflare control device for wastewater emissions, you must keep records as specified in § 63.998(c)(1) in addition to the records required in § 63.147(d).

11. Section 63.2520 is amended as follows:

a. Revising paragraph (c)(4);

b. Revising paragraph (d)(2)(i);

c. Revising paragraphs (e)(5) introductory text, (e)(5)(ii)(C), and (e)(5)(iii)(K) and adding new paragraph (e)(5)(iv);

d. Revising paragraph (e)(9); and

e. Revising the first two sentences of paragraph (e)(10)(i) and paragraph (e)(10)(ii)(C).

The additions and revisions read as follows:

§ 63.2520 What reports must I submit and when?

* * * * *

(c) * * *

(4) Data and rationale used to support an engineering assessment to calculate uncontrolled emissions in accordance with § 63.1257(d)(2)(ii). This requirement does not apply if you determine the total HAP concentration to be less than 50 ppmv or if you use previous test data to establish the uncontrolled emissions.

(d) * * *

(2) * * *

(i) The results of any applicability determinations, emission calculations, or analyses used to identify and quantify HAP usage or HAP emissions from the affected source.

* * * * *

(e) * * *

(5) The compliance report must contain the information on deviations, as defined in § 63.2550, according to paragraphs (e)(5)(i), (ii), (iii), and (iv) of this section.

* * * * *

(ii) * * *

(C) Operating logs of processes with batch vents for the day(s) during which the deviation occurred, except operating logs are not required for deviations of the work practice standards for equipment leaks.

(iii) * * *

(K) Operating logs of processes with batch vents for each day(s) during which the deviation occurred.

* * * * *

(iv) If you documented in your notification of compliance status report that an MCPU has Group 2 batch process vents because the non-reactive HAP usage is less than 10,000 lb/yr, the total uncontrolled organic HAP emissions from the batch process vents in an MCPU will be less than 1,000 lb/yr for the anticipated number of standard batches, or total uncontrolled hydrogen halide and halogen HAP emissions from all batch process vents and continuous process vents in a process are less than 1,000 lb/yr, include the records associated with each calculation required by § 63.2525(e) that exceeds an applicable HAP usage or emissions threshold.

* * * * *

(9) Applicable records and information for periodic reports as specified in referenced subparts F, G, SS, WW, and GGG of this part and subpart F of 40 CFR part 65.

(10) * * *

(i) Except as specified in paragraph (e)(10)(ii) of this section, whenever you make a process change, or change any of the information submitted in the notification of compliance status report or a previous compliance report, that is not within the scope of an existing operating scenario, you must document the change in your compliance report. A process change does not include moving within a range of conditions identified in the standard batch, and a nonstandard batch does not constitute a process change. * * *

(ii) * * *

(C) A change from Group 2 to Group 1 for any emission point except for batch process vents that meet the conditions specified in § 63.2460(b)(6)(i).

12. Section 63.2525 is amended by revising paragraphs (a), (c), and (e) to read as follows:

§ 63.2525 What records must I keep?

(a) Each applicable record required by subpart A of this part 63 and in referenced subparts F, G, SS, WW, and GGG of this part 63 and in referenced subpart F of 40 CFR part 65.

* * * * *

(c) A schedule or log of operating scenarios for processes with batch vents updated each time a different operating scenario is put into effect.

* * * * *

(e) The information specified in paragraph (e)(2), (3), or (4) of this section, as applicable, for each process with Group 2 batch process vents or uncontrolled hydrogen halide and halogen HAP emissions from the sum of all batch and continuous process vents less than 1,000 lb/yr. No records are required for situations described in paragraph (e)(1) of this section.

(1) No records are required if you documented in your notification of compliance status report that the MCPU meets any of the situations described in paragraph (e)(1)(i), (ii), or (iii) of this section.

(i) The MCPU does not process, use, or produce HAP.

(ii) You control the Group 2 batch process vents using a flare that meets the requirements of § 63.987.

(iii) You control the Group 2 batch process vents using a control device for which your determination of worst case for initial compliance includes the contribution of all Group 2 batches.

(2) If you documented in your notification of compliance status report that an MCPU has Group 2 batch process vents because the non-reactive organic HAP usage is less than 10,000 lb/yr, as specified in § 63.2460(b)(7), you must keep records of the amount of HAP material used, and calculate the daily rolling annual sum of the amount used no less frequently than monthly. If a record indicates usage exceeds 10,000 lb/yr, you must estimate emissions for the preceding 12 months based on the number of batches operated and the estimated emissions for a standard batch, and you must begin recordkeeping as specified in paragraph (e)(4) of this section. After 1 year, you may revert to recording only usage if the usage during the year is less than 10,000 lb.

(3) If you documented in your notification of compliance status report that total uncontrolled organic HAP emissions from the batch process vents in an MCPU will be less than 1,000 lb/yr for the anticipated number of standard batches, then you must keep records of the number of batches operated and calculate a daily rolling annual sum of batches operated no less frequently than monthly. If the number of batches operated results in organic HAP emissions that exceed 1,000 lb/yr, you must estimate emissions for the preceding 12 months based on the number of batches operated and the estimated emissions for a standard batch, and you must begin recordkeeping as specified in paragraph (e)(4) of this section. After one year, you may revert to recording only the number of batches if the number of batches operated during the year results in less than 1,000 lb of organic HAP emissions.

(4) If you meet none of the conditions specified in paragraphs (e)(1) through (3) of this section, you must keep records of the information specified in paragraphs (e)(4)(i) through (iv) of this section.

(i) A record of the day each batch was completed and/or the operating hours per day for continuous operations with hydrogen halide and halogen emissions.

(ii) A record of whether each batch operated was considered a standard batch.

(iii) The estimated uncontrolled and controlled emissions for each batch that is considered to be a nonstandard batch.

(iv) Records of the daily 365-day rolling summations of emissions, or alternative records that correlate to the emissions (e.g., number of batches), calculated no less frequently than monthly.

* * * * *

13. Section 63.2535 is amended by revising paragraph (k) to read as follows:

§ 63.2535 What compliance options do I have if part of my plant is subject to both this subpart and another subpart?

* * * * *

(k) *Compliance with 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V.* After the compliance date specified in § 63.2445, if you have an affected source with equipment that is also subject to the requirements of 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, you may elect to apply this subpart to all such equipment. If you elect this method of compliance, you must consider all total organic compounds, minus methane and ethane, in such equipment for purposes of compliance with this subpart, as if they were organic HAP. Compliance with the provisions of this subpart, in the manner described in this paragraph (k), will constitute compliance with 40 VFR part 60, subpart VV and 40 CFR part 61, subpart V, as applicable.

* * * * *

14. Section 63.2550 is amended as follows:

a. Removing and reserving paragraphs (b) and (c);

b. Revising the last sentence in paragraph (i) introductory text;

c. Revising paragraph (8) in the definition of the term ''batch process vent'' in paragraph (i);

d. Adding new paragraphs (6) and (7) to the definition of the term ''continuous process vent'' in paragraph (i);

e. Revising the definition of the term ''Group 1 continuous process vent'' in paragraph (i);

f. Adding new paragraph (6) to the definition of the term ''miscellaneous organic chemical manufacturing process'' in paragraph (i);

g. Revising the definition of the term ''surge control vessel'' in paragraph (i);

h. Revising the introductory text of the definition of the term ''wastewater'' in paragraph (i); and

i. Adding, in alphabetical order, new definitions for the terms ''biofilter,'' ''continuous operation,'' ''halogen atoms,'' ''HAP metals,'' and ''process condenser'' in paragraph (i).

The additions and revisions read as follows:

§ 63.2550 What definitions apply to this subpart?

* * * * *

(i) * * * If a term is defined in § 63.2, § 63.101, § 63.111, § 63.981, § 63.1061, § 63.1251, or § 65.2 and in this paragraph (i), the definition in this paragraph (i) applies for the purposes of this subpart.

* * * * *

Batch process vent * * *

(8) Emission streams from emission episodes that are undiluted and uncontrolled containing less than 50 ppmv HAP are not part of any batch process vent. A vent from a unit operation, or a vent from multiple unit operations that are manifolded together, from which total uncontrolled HAP emissions are less than 200 lb/yr is not a batch process vent; emissions for all emission episodes associated with the unit operation(s) must be included in the determination of the total mass emitted. The HAP concentration or mass emission rate may be determined using any of the following: Process knowledge that no HAP are present in the emission stream; an engineering assessment as discussed in § 63.1257(d)(2)(ii), except that you do not need to demonstrate that the equations in § 63.1257(d)(2)(i) do not apply, and the precompliance reporting requirements specified in § 63.1257(d)(2)(ii)(E) do not apply for the purposes of this demonstration; equations specified in § 63.1257(d)(2)(i), as applicable; test data using Method 18 of 40 CFR part 60, appendix A; or any other test method that has been validated according to the procedures in Method 301 of appendix A of this part.

* * * * *

Biofilter means an enclosed control system such as a tank or series of tanks

with a fixed roof that contact emissions with a solid media (such as bark) and use microbiological activity to transform organic pollutants in a process vent stream to innocuous compounds such as carbon dioxide, water, and inorganic salts. Wastewater treatment processes such as aeration lagoons or activated sludge systems are not considered to be biofilters.

* * * * *

Continuous operation means any operation that is not a batch operation.

* * * * *

Continuous process vent * * *

(6) The references to an ''air oxidation reactor, distillation unit, or reactor'' in § 63.107 mean any continuous operation for the purposes of this subpart.

(7) If a gas stream that originates as a continuous flow from a continuous operation is combined with gas streams from other process operations, but not items in § 63.107(h), the determination of whether the gas stream is a continuous process vent must be made at a point prior to the combination of the gas streams. The phrase ''point of discharge to the atmosphere (or the point of entry to a control device, if any)'' in § 63.107(c), (d), and (f) means ''a point prior to the combination of the gas streams'' when such gas streams are combined.

* * * * *

Group 1 continuous process vent means a continuous process vent for which the flow rate is greater than or equal to 0.005 standard cubic meter per minute, and the total resource effectiveness index value, calculated according to § 63.2455(b), is less than or equal to 1.9 at an existing source and less than or equal to 5.0 at a new source.

* * * * *

Halogen atoms mean chlorine and fluorine.

* * * * *

HAP metals means the metal portion of antimony compounds, arsenic compounds, beryllium compounds, cadmium compounds, chromium compounds, cobalt compounds, lead compounds, manganese compounds, mercury compounds, nickel compounds, and selenium compounds.

* * * * *

Miscellaneous organic chemical manufacturing process * * *

(6) The end of a process that produces a solid material is either up to and including the dryer or, for a polymer production process without a dryer, up to and including the extruder or die plate, except in two cases. If the dryer, extruder, or die plate is followed by an operation that is designed and operated to remove HAP solvent or residual HAP monomer from the solid, then the solvent removal operation is the last step in the process. If the dried solid is diluted or mixed with a HAP-based solvent, then the solvent removal operation is the last step in the process.

* * * * *

Process condenser means a condenser whose primary purpose is to recover material as an integral part of an MCPU. A primary condenser or condensers in series are considered to be integral to the MCPU if they are capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.*, net positive heating value) use, reuse or for sale for fuel value use, or reuse. All condensers recovering condensate from an MCPU at or above the boiling point or all condensers in line prior to a vacuum source are considered process condensers.

* * * * *

Surge control vessel means feed drums, recycle drums, and intermediate vessels as part of any continuous operation. Surge control vessels are used within an MCPU when in-process storage, mixing, or management of flowrates or volumes is needed to introduce material into continuous operations.

* * * * *

Wastewater means water that is discarded from an MCPU through a POD and that contains either: an annual average concentration of compounds in Tables 8 and 9 to this subpart of at least 5 ppmw and has an annual average flowrate of 0.02 liters per minute or greater; or an annual average concentration of compounds in Tables 8 and 9 to this subpart of at least 10,000 ppmw at any flowrate. Wastewater means process wastewater or maintenance wastewater. The following are not considered wastewater for the purposes of this subpart: * * *

* * * * *

15. Table 2 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 2 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR BATCH PROCESS VENTS

For each . . .	Then you must . . .	And you must . . .
1. Process with Group 1 batch process vents.	a. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥98 percent by weight by venting emissions from a sufficient number of the vents through a closed-vent system to any combination of control devices. (except a flare); or	Not applicable.
	b. Reduce collective uncontrolled organic HAP emissions from the sum of all batch process vents within the process by ≥95 percent by weight by venting emissions from a sufficient number of the vents through a closed-vent system to any combination of recovery devices or a biofilter, except you may elect to comply with the requirements of subpart WW of this part for any process tank; or.	Not applicable.
	c. Reduce uncontrolled organic HAP emissions from one or more batch process vents within the process by venting through a closed-vent system to a flare or by venting through a closed-vent to any combination of control devices (excluding a flare) that reduce organic HAP to an outlet concentration ≤20 ppmv as TOC or total organic HAP.	For all other batch process vents within the process, reduce collective organic HAP emissions as specified in item 1.a and/or item 1.b of this table.
*	* * * * * *	

16. Table 3 to subpart FFFF of part 63 is revised to read as follows:

TABLE 3 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR HYDROGEN HALIDE AND HALOGEN HAP EMISSIONS OR HAP METALS EMISSIONS FROM PROCESS VENTS

For each . . .	You must . . .
1. Process with uncontrolled hydrogen halide and halogen HAP emissions from process vents ≥1,000 lb/yr.	a. Reduce collective hydrogen halide and halogen HAP with emissions by ≥99 percent by weight or to an outlet concentration ≤20 ppmv by venting through a closed-vent system to any combination of control devices, or b. Reduce the halogen atom mass emission rate to ≤0.45 halogen HAP kg/hr by venting through a closed-vent system to a halogen reduction device.
2. Process at a new source with uncontrolled emissions from process vents ≥150 lb/yr of HAP metals.	Reduce overall emissions of HAP metals by ≥97 percent by at a new weight.

17. Table 4 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 4 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR STORAGE TANKS

For each . . .	For which . . .	Then you must . . .
1. Group 1 storage tank	a. The maximum true vapor pressure of total HAP at the storage temperature of ≥76.6 kilopascals.	i. Reduce total HAP emissions by ≥95 percent by weight or to ≤20 ppmv of TOC or organic HAP and ≤20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or ii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iii. Reduce total HAP emissions by venting emissions to a fuel gas system or process in accordance with § 63.984 and the requirements referenced therein.

TABLE 4 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS FOR STORAGE TANKS—Continued

For each . . .	For which . . .	Then you must . . .
	b. The maximum true vapor pressure of total HAP at the storage temperature is <76.6 kilopascals.	i. Comply with the requirements of subpart WW of this part, except as specified in § 63.2470; or ii. Reduce total HAP emissions by ≥95 percent at the storage by weight or to ≤20 ppmv of TOC or organic HAP and ≤20 ppmv of hydrogen halide and halogen HAP by venting emissions through a closed vent system to any combination of control devices (excluding a flare); or iii. Reduce total organic HAP emissions by venting emissions through a closed vent system to a flare; or iv. Reduce total HAP emissions by venting emissions to a fuel gas system or process in accordance with § 63.984 and the requirements referenced therein.
* * * * * * *		

18. Table 5 to subpart FFFF of part 63 is amended by revising entry 1 to read as follows:

TABLE 5 TO SUBPART FFFF OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR TRANSFER RACKS

For each . . .	You must . . .
1. Group 1 transfer rack	a. Reduce emissions of total organic HAP by ≥98 percent by weight or to an outlet concentration ≤20 ppmv as organic HAP or TOC by venting emissions through a closed-vent system to any combination of control devices (except a flare); or b. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a flare; or c. Reduce emissions of total organic HAP by venting emissions to a fuel gas system or process in accordance with § 63.984 and the requirements referenced therein; or d. Use a vapor balancing system designed and operated to collect organic HAP vapors displaced from tank trucks and railcars during loading and route the collected HAP vapors to the storage tank from which the liquid being loaded originated or to another storage tank connected by a common header.
* * * * * * *	

19. Table 6 to subpart FFFF of part 63 is revised to read as follows:

TABLE 6 TO SUBPART FFFF OF PART 63.—REQUIREMENTS FOR EQUIPMENT LEAKS

For all . . .	You must . . .
1. Equipment that is in organic HAP service	a. Comply with the requirements of subpart UU of this part 63 and the requirements referenced therein, except as specified in § 63.2480(b), or b. Comply with the requirements of 40 CFR part 65, subpart F and the requirements referenced therein, except as specified in § 63.2480(c).

20. Table 12 to subpart FFFF of part 63 is amended as follows:

a. Removing the entries for §§ 63.8(c)(4)(i)–(ii) and 63.10(e)(1)–(2);

b. Adding new entries for §§ 63.8(c)(4)(i), 63.8(c)(4)(ii), 63.10(e)(1), 63.10(e)(2)(i), and 63.10(e)(2)(ii); and

c. Revising the entries for §§ 63.8(c)(4), 63.8(c)(6), 63.8(c)(7)–(8), 63.8(d), 63.8(e), 63.9(g), 63.10(b)(2)(xiii), and 63.10(c)(1)–(6), (9)–(15).

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF

Citation	Subject	Explanation
§ 63.8(c)(4)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subparts G and SS of part 63. Requirements for COMS do not apply because subpart FFFF does not require COMS.
§ 63.8(c)(4)(i)	COMS Measurement and Recording Frequency	No; subpart FFFF does not require COMS.
§ 63.8(c)(4)(ii)	CEMS Measurement and Recording Frequency	Yes.

TABLE 12 TO SUBPART FFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFF—Continued

Citation	Subject	Explanation
*	*	*
§ 63.8(c)(6)	CMS Requirements	Only for CEMS; requirements for CPMS are specified in referenced subparts G and SS of this part 63. Requirements for COMS do not apply because subpart FFFF does not require COMS.
§ 63.8(c)(7)–(8)	CMS Requirements	Only for CEMS. Requirements for CPMS are specified in referenced subparts G and SS of part 63. Requirements for COMS do not apply because subpart FFFF does not require COMS.
§ 63.8(d)	CMS Quality Control	Only for CEMS.
§ 63.8(e)	CMS Performance Evaluation	Only for CEMS. Section 63.8(e)(5)(ii) does not apply because subpart FFFF does not require COMS.
*	*	*
§ 63.9(g)	Additional Notifications When Using CMS	Only for CEMS. Section 63.9(g)(2) does not apply because subpart FFFF does not require COMS.
*	*	*
§ 63.10(b)(2)(xiii)	Records	Only for CEMS.
*	*	*
§ 63.10(c)(1)–(6), (9)–(15)	Records	Only for CEMS. Recordkeeping requirements for CPMS are specified in referenced subparts G and SS of this part 63.
*	*	*
§ 63.10(e)(1)	Additional CEMS Reports	Yes.
§ 63.10(e)(2)(i)	Additional CMS Reports	Only for CEMS.
§ 63.10(e)(2)(ii)	Additional COMS Reports	No. Subpart FFFF does not require COMS.
*	*	*

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4145/P.L. 109–116
To direct the Joint Committee on the Library to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall, and for other purposes. (Dec. 1, 2005; 119 Stat. 2524)

H.R. 126/P.L. 109–117
To amend Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore. (Dec. 1, 2005; 119 Stat. 2526)

H.R. 539/P.L. 109–118
Caribbean National Forest Act of 2005 (Dec. 1, 2005; 119 Stat. 2527)

H.R. 606/P.L. 109–119
Angel Island Immigration Station Restoration and Preservation Act (Dec. 1, 2005; 119 Stat. 2529)

H.R. 1972/P.L. 109–120
Franklin National Battlefield Study Act (Dec. 1, 2005; 119 Stat. 2531)

H.R. 1973/P.L. 109–121
Senator Paul Simon Water for the Poor Act of 2005 (Dec. 1, 2005; 119 Stat. 2533)

H.R. 2062/P.L. 109–122
To designate the facility of the United States Postal Service located at 57 West Street in Newville, Pennsylvania, as the "Randall D. Shughart Post Office Building". (Dec. 1, 2005; 119 Stat. 2541)

H.R. 2183/P.L. 109–123
To designate the facility of the United States Postal Service located at 567 Tompkins Avenue in Staten Island, New York, as the "Vincent Palladino Post Office". (Dec. 1, 2005; 119 Stat. 2542)

H.R. 3853/P.L. 109–124
To designate the facility of the United States Postal Service located at 208 South Main Street in Parkdale, Arkansas, as the Willie Vaughn Post Office. (Dec. 1, 2005; 119 Stat. 2543)

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