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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Title 3—

The President

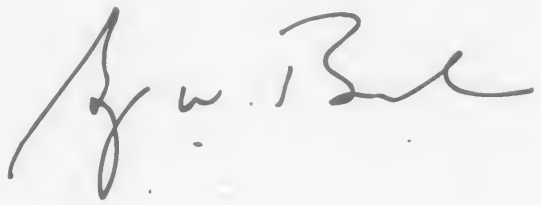
Memorandum of July 4, 2005

Assignment of Reporting Function

Memorandum for the Secretary Of State

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the function of the President under section 582 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005 (Division D, Public Law 108–447). References in this memorandum to section 582 shall deemed to include reference to any subsequently enacted provision of law that is the same or substantially the same as section 582.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, July 4, 2005.

[FR Doc. 05–15232
Filed 7–29–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 996

[Docket No. FV05–996–2 FR]

Change in Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the peanut quality and handling standards (Standards) to require that domestic and imported peanuts be dried to 18 percent moisture or less prior to inspection and to 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling. The Standards and the Peanut Standards Board (Board) were established by the Department of Agriculture (USDA), pursuant to section 1308 of the Farm Security and Rural Investment Act of 2002. The Board suggested changing the peanut quality and handling standards to allow handlers and importers to receive or acquire high moisture peanuts to promote the development of new drying technologies, increase efficiencies, and reduce costs to the industry.

DATES: Effective August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone (301) 734–5243, Fax: (301) 734–5275; or George J. 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; or E-mail: *dawana.clark@usda.gov*, *kenneth.johnson@usda.gov* or *george.kelhart@usda.gov*.

Small businesses may request information on complying with this rule 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 final rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the "Farm Bill."

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

Section 1308 of the Farm Bill requires that USDA take several actions with regard to peanuts marketed in the United States. These include ensuring mandatory inspection on all peanuts marketed in the United States; establishing the Board comprised of producers and industry representatives to advise USDA; developing and implementing peanut quality and handling standards; and modifying those quality and handling standards when needed. An interim final rule was published in the **Federal Register** (67 FR 57129) on September 9, 2002, terminating the previous peanut programs and establishing standards in part 996 to insure the continued inspection of 2002 crop year peanuts and subsequent crop year peanuts, 2001 crop year peanuts not yet inspected, and 2001 crop year failing peanuts that had not yet met disposition standards.

The initial Board was selected and announced on December 5, 2002. A final rule finalizing the interim final rule was published in the **Federal Register** (68 FR 1145) on January 9, 2003, to continue requiring all domestic and imported peanuts marketed in the United States to be handled consistent with the handling standards and officially inspected against the quality standards of the new program. The peanut quality and handling standards were later revised in rules published in the **Federal Register** (68 FR 46919, August 7, 2003, and 68 FR 53490, September 11, 2003). The provisions of this program continue in force and effect until modified, suspended, or terminated.

Pursuant to the Farm Bill, USDA has consulted with Board members in its review of the handling and quality standards for the 2005 and subsequent crop years. The quality and handling standards are intended to assure that satisfactory quality and wholesome peanuts are used in the domestic and import peanut markets. All peanuts intended for human consumption must be officially inspected and graded by the Federal or Federal-State Inspection Service and, if necessary, undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA.

Under the Standards, § 996.30(b) *Moisture*. specifies "No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture may be received and dried to not more than 10.49 percent moisture prior to storing or milling: And *Provided further*, That Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture."

High Moisture peanuts are farmers stock peanuts that have a moisture content, when harvested, in excess of 10.49 percent moisture. In order to ensure that high moisture peanuts are dried to or below 10.49 percent moisture, growers must dry the peanuts on individual wagons/trailers. Often farmers stock peanuts are dried, taken to a sheller or handler, inspected and found to still be too high in moisture

content, and must then be returned for additional drying at the grower's farm, at a handler/buying point facility, or at another location. Not all buying points, especially those in very rural locations, have drying facilities. This results in inefficiencies and added costs.

Handlers may receive high moisture peanuts, but cannot acquire them. Peanuts that are received cannot be mixed, commingled, or otherwise lose their identity. Accordingly, any high moisture deliveries from a producer cannot be mixed with other high moisture deliveries. However, the inability to commingle high moisture peanut deliveries for drying slows producer deliveries and raises drying costs. It also raises inspection costs because the peanuts need to be inspected a second time to verify moisture levels prior to handler acquisition.

In response to requests from industry representatives and the Board, USDA allowed a trial relaxation in incoming peanut requirements for the 2004 crop year only. The Standards continued to require that farmers stock peanuts be dried to 10.49 percent moisture or less before storing or milling. However, wagonloads or lots of farmers stock peanuts grading between 10.50 and 18.00 percent moisture could be commingled at the handler/buying point facilities and bulk dried by handlers, in agreement with each producer of the wagonloads or lots being commingled. An 18 percent moisture limit recognizes the difficulties in the Inspection Service's use of its shelling equipment for peanuts with more than 18 percent moisture. After drying, a second inspection for moisture only was performed by Federal-State inspectors and documented accordingly. When the commingled lot was presented for the second "moisture only" inspection, the buying point was required to provide documentation identifying the specific lots or wagonloads which constituted the commingled lot. In the event that a commingled lot, after bulk drying, still did not meet the 10.49 percent moisture requirement, the lot could be further dried and re-inspected until the lot contained no more than 10.49 percent moisture.

This temporary relaxation was the culmination of several meetings and requests from the Board and the peanut industry to bring the high moisture issue to conclusion. The Board made several recommendations regarding high moisture peanuts in 2003 and 2004. However, prior to the Board's discussion of any changes for 2005 crop peanuts, the USDA's Farm Service Agency (FSA) identified an FSA program issue requiring resolution before implementation of any relaxation to the moisture standard. Under FSA's loan program (7 CFR part 1421), high moisture peanuts must be segregated by each producer and dried to a moisture content not exceeding 10.49 percent. If high moisture peanuts from more than one producer are commingled and batch dried, the quality, quantity, and identity of each participating producer's peanuts would be lost. As such, those high moisture peanuts would not be eligible for FSA marketing assistance loans (MAL) or loan deficiency payments (LDP).

These concerns have been resolved through a formulation of a revised FSA Form 1007 (a combined inspection certificate and calculation worksheet) that identifies and tracks high moisture peanut shipments. Inspection procedures and reporting requirements will remain unchanged. The original peanut inspection notesheet/certificate will accompany the FSA Form 1007 with the converted high moisture factors from the high moisture conversion charts provided by the National Peanut Research Laboratory (NPRL). The NPRL conversion charts provide a guide for varying levels of high moisture peanuts received and the converted grade factor equivalents when dried down to an acceptable level without having to conduct another inspection on the dried down peanuts.

The Board met on March 16, 2005, and unanimously recommended that § 996.30(b) be modified so that handlers and importers may receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 18 percent moisture: *Provided*, That farmers stock peanuts be dried to not more than 18 percent moisture prior to inspection and grading. If the sound mature kernel and sound splits grade is 60 or below on a lot of peanuts that contains moisture between 10.49 and 18 percent, the lot of peanuts shall be dried to a moisture level of 10.49 or below prior to inspection and grading. Valencia peanuts may only be inspected at moisture levels 10.49 and below. All farmers stock peanuts must be dried to not more than 10.49 percent moisture prior to storing or milling: *Provided*, That Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

On March 23, 2005, the Board's implementation sub-committee recommended the removal from the Board's recommendation of the moisture requirement on peanuts with a sound mature kernel plus sound splits grade of 60 or below because this requirement was not needed.

According to a number of Board members, allowing handlers and importers to receive high moisture peanuts will make a significant difference in the efficient acquisition and warehousing of farmers' stock peanuts each fall. Allowing the acquisition of high moisture peanuts will allow handlers to accumulate a number of loads and batch dry them at the same time. These Board members indicated that this will speed up drying, grading, and movement of peanuts at harvest, which will be especially important when adverse weather conditions during harvest could cause peanut quality to deteriorate. According to some Board members, it will also reduce drying and inspection costs.

Therefore under this final rule, domestic and imported peanuts must be dried to 18 percent or less prior to inspection and 10.49 percent or less prior to storing or milling. Virginia-type peanuts used for seed must be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Analysis Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had 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. There are approximately 55 peanut shelling entities, operating approximately 70 shelling plants, and 25 importers subject to regulation under the peanut program. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201), as those having annual receipts of less than $6,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts) can be obtained from the 2002 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 7,551 peanut farms with annual agricultural sales valued at less

than $500,000 in 2002, representing 87 percent of the total number of peanut farms in the U.S. (8,640). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 2002 (less than $750,000 in sales) was likely a few percentage points higher than 87 percent, and may have shifted by a small amount since 2002. Thus, the proportion of small peanut farms is likely to be close to 90 percent.

According to the National Agricultural Statistics Service (NASS), the two-year average peanut production for the 2003 and 2004 crop years was 4.203 billion pounds, harvested from average acreage of 1.353 million, yielding an average of 3,106 pounds per acre. The average value of production for the two-year period was $816.904 million. The average grower price over the two-year period was $0.194 per pound, and the average value per harvested acre was $604. Dividing the two year average value of production ($816.904 million) by the estimated 8,640 peanut farms (2002 Agricultural Census) yields an estimated average peanut sales revenue per farm of approximately $94,440. Average peanut acreage per farm is 156.

The Agricultural Census provides data on the value of annual sales of all agricultural products from peanut farms in terms of ranges. The value of annual agricultural product sales of the median peanut farm in 2002 was between $50,000 and $99,999. The median is the midpoint ranging from the largest to the smallest.

Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two year average value of production of $816.904 million by 14,186 peanut producers (Farm Service Agency 2004 estimate) results in an estimate of average revenue per producer of approximately $57,585.

The current 14 custom blanchers, 8 custom remillers, 4 oil mill operators, 4 USDA and 15 USDA-approved private chemical (aflatoxin) laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71.

These requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (Inspection Service) that will perform inspections under this peanut program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years.

The majority of peanut importers have annual receipts under $6,000,000. Some importers use customs brokers' import services. These brokers are usually held accountable by the importer to see that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These reporting requirements are not applied disproportionately to small customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, importers, and above-mentioned entities may be classified as small businesses.

This final rule changes the minimum peanut quality and handling standards so that handlers may receive peanuts with a moisture content of up to 18 percent. The Board suggested changing the minimum peanut quality and handling standards to allow handlers to receive high moisture peanuts to promote the development of new drying technologies, increase efficiencies and reduce costs to the industry.

USDA has considered alternatives to the suggested change to the quality and handling standards. The Farm Bill requires USDA to consult with the Board on these standards. An alternative would be to continue the current standards for the 2005 crop year. The current Board's recommended change to the handling and quality standards was raised during last year's USDA/Board standards review but was tabled until an inter-agency collaboration (AMS and FSA) could coordinate their respective peanut handling and loan regulations. However, because of the anticipated benefits of the recommended change, USDA believes the implementation of the Board's suggested change is preferable to continuing without change. The Board's meeting was open to a wide audience and all interested persons were invited to attend the meeting and provide input.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Information Collection

The Farm Bill specifies in section 1601(c)(2)(A) that the standards established pursuant to it, may be implemented without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Furthermore, this rule does not change the existing information collection burden.

Section 1601 of the Farm Bill also provides that promulgation of or amendments to the standards may be implemented without extending interested parties an opportunity to comment. However, due to the nature of the proposed changes, interested parties were provided 15 days to file comments. The proposed rule concerning these changes was published in the **Federal Register** (70 FR 35562) on June 21, 2005. The rule was posted on the AMS Web site specified above and was available through the internet by the Office of the Federal Register. The proposed rule provided that comments received by July 6, 2005, would be considered in finalizing the rulemaking action.

A total of four comments were received from a peanut shellers association, a peanut product manufacturers association, a peanut growers association, and the Georgia Peanut Commission. Three comments were in support of the proposed rule. The comment from the peanut commission stated that it wanted to be certain that grower interests were protected and that any proposed changes would not be detrimental to growers. This rule would allow handlers and importers to receive or acquire high moisture peanuts thereby promoting the development of new drying technologies, increasing efficiencies and reducing costs to the overall industry. This comment also mentioned an additional concern pertaining to comparable loan calculations on peanuts that have been dried to a suitable loan level. As stated previously in this action, FSA has revised its Form 1007 to identify and track high moisture peanut shipments, including green peanuts. Accordingly, no changes are made in the provisions as proposed.

It also is found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because producers and handlers are preparing for the 2005 crop year, which

starts September 1. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and four comments were received as discussed herein.

List of Subjects 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 996 is amended as follows:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

■ 1. The authority citation for 7 CFR part 996 continues to read as follows:

Authority: 7 U.S.C. 7958.

■ 2. Paragraph (b) of § 996.30 is revised to read as follows:

§ 996.30 Incoming quality standards.

(a) * * *

(b) *Moisture.* Domestic and imported peanuts shall be dried to 18 percent or less prior to inspection and to 10.49 percent or less prior to storing or milling: *Provided,* That Virginia-type peanuts used for seed shall be dried to 18 percent or less prior to inspection and to 11.49 percent or less prior to storing or milling.

* * * * *

Dated: July 27, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–15167 Filed 7–27–05; 4:10 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21054; Directorate Identifier 2005–NM–054–AD; Amendment 39–14205; AD 2005–15–16]

RIN 2120–AA64

Airworthiness Directives; AvCraft Dornier Model 328–300 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain AvCraft Dornier Model 328–300 airplanes. This AD requires modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel system; as applicable. This AD also requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system. This AD is prompted by the results of fuel system reviews conducted by the airplane manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: This AD becomes effective September 6, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of September 6, 2005.

ADDRESSES: For service information identified in this AD, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–21054; the directorate identifier for this docket is 2005–NM–054–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: The FAA proposed to amend 14 CFR part 39 with an AD for certain AvCraft Dornier Model 328–300 airplanes. That action, published in the **Federal Register** on April 26, 2005 (70 FR 21346), proposed to require modifying the electrical wiring of the fuel pumps; installing insulation at the flow control and shut-off valves, and other components of the environmental control system; installing markings at fuel wiring harnesses; replacing the wiring harness of the auxiliary fuel system with a new wiring harness; and installing insulated couplings in the fuel system; as applicable. That action also proposed to require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate new inspections of the fuel tank system.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that was submitted on the proposed AD.

Provide for Incorporation of Temporary Revision By Normal Revision Process

The commenter requests that we revise paragraph (h) of the proposed AD to provide for incorporation of AvCraft Temporary Revision (TR) ALD–028, dated October 15, 2003, into the body of the Airworthiness Limitations section of the Instructions for Continued Airworthiness document through the normal revision process. The commenter notes that the proposed AD, as written, would require the TR to remain in the Airworthiness Limitations section forever. However, once the information in the TR is incorporated into the Airworthiness Limitations section through the normal revision process, the TR document will be unnecessary.

We agree. We have revised paragraph (h) of this AD accordingly, and added a new note, Note 1, to clarify the revised language in paragraph (h). These changes will allow the TR to be removed from the Airworthiness Limitations once the information in the TR has been incorporated into the Airworthiness Limitations by the normal revision process.

Explanation of Change to Applicability

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

Explanation of Changes to Tables 1 and 2 of Proposed AD

Tables 1 and 2 of the proposed AD incorrectly referred to paragraphs that do not exist in the referenced service bulletins. We have revised Tables 1 and 2 of this AD to refer to the correct paragraphs in the referenced service bulletins.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $65 per hour.

ESTIMATED COSTS

For airplanes—	Work hours	Parts	Number of U.S.-registered airplanes	Cost per airplane	Fleet cost
With option 033F003 installed	95	$9,402	Currently, none of these affected airplanes are on the U.S. Register.	$15,577 if an affected airplane is imported and placed on the U.S. Register in the future.	None.
Without option 033F003 installed	70	14,118	47	18,668	$877,396.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–15–16 Avcraft Aerospace GmbH (Formerly Fairchild Dornier GmbH): Amendment 39–14205. Docket No. FAA–2005–21054; Directorate Identifier 2005–NM–054–AD.

Effective Date

(a) This AD becomes effective September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to AvCraft Dornier Model 328–300 airplanes, certificated in any category, serial numbers 3105 through 3223 inclusive.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the airplane manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss 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.

Without Option 033F003 Installed: Modification and Installations

(f) For airplanes without option 033F003 installed: Within 12 months after the effective date of this AD, do the actions in Table 1 of this AD in accordance with the Accomplishment Instructions of AvCraft Service Bulletin SB–328J–00–197, dated August 23, 2004.

TABLE 1.—REQUIREMENTS FOR AIRPLANES WITHOUT OPTION 033F003 INSTALLED

Do the following actions—	By accomplishing all the actions specified in—
(1) Modify the electrical wiring of the left-hand and right-hand fuel pumps.	Paragraph 1.B(1) of the service bulletin.
(2) Install insulation at the left-hand and right-hand flow control and shut-off valves and other components of the environmental control system.	Paragraph 1.B(2) of the service bulletin.
(3) Install markings at fuel wiring harnesses	Paragraph 1.B(3) of the service bulletin.

With Option 033F003 Installed: Modification, Replacement, and Installation

(g) For airplanes with option 033F003 installed: Within 12 months after the effective date of this AD, do the actions in Table 2 of this AD in accordance with the Accomplishment Instructions of AvCraft Service Bulletin SB–328J–00–198, dated August 23, 2004.

TABLE 2.—REQUIREMENTS FOR AIRPLANES WITH OPTION 033F003 INSTALLED

Do the following actions—	By accomplishing all the actions specified in—
(1) Modify the electrical wiring of the left-hand and right-hand fuel pumps.	Paragraph 2.B(1) of the service bulletin.
(2) Replace the wiring harness of the auxiliary fuel system with a new wiring harness.	Paragraph 2.B(2) of the service bulletin.
(3) Install markings at fuel wiring harnesses	Paragraph 2.B(3) of the service bulletin.
(4) Install insulated couplings in the fuel system	Paragraph 2.B(5) of the service bulletin.

Revision to Airworthiness Limitations

(h) Within 12 months after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate the information in AvCraft Temporary Revision (TR) ALD–028, dated October 15, 2003, into the AvCraft 328JET Airworthiness Limitations Document. Thereafter, except as provided in paragraph (i) of this AD, no alternative inspection intervals may be approved for this fuel tank system.

Note 1: This may be done by inserting a copy of AvCraft TR ALD–028, dated October 15, 2003, in the AvCraft 328JET Airworthiness Limitations Document. When this TR has been included in general revisions of the AvCraft 328JET Airworthiness Limitations Document, the temporary revision no longer needs to be inserted into the revised Airworthiness Limitations document.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) German airworthiness directives D–2005–002 (for airplanes with option 033F003 installed) and D–2005–063 (for airplanes without option 033F003 installed), both dated January 26, 2005, also address the subject of this AD.

Material Incorporated by Reference

(k) You must use the applicable documents in Table 3 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only the odd-numbered pages of AvCraft Service Bulletins SB–328J–00–197 and SB–328J–00–198 contain the issue date of the documents.) The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

Service information	Date
AvCraft Service Bulletin SB–328J–00–197, including Price Information Sheet	August 23, 2004.
AvCraft Service Bulletin SB–328J–00–198, including Price Information Sheet	August 23, 2004.
AvCraft Temporary Revision ALD–028 to the AvCraft 328JET Airworthiness Limitations Document	October 15, 2003.

Issued in Renton, Washington, on July 20, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14789 Filed 7–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

[Docket No. 2000N–1571]

Animal Drugs, Feeds, and Related Products; Enrofloxacin for Poultry; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing the portions reflecting approval of a new animal drug application (NADA) for which FDA has withdrawn approval. NADA 140–828, sponsored by Bayer Corp., provides for use of enrofloxacin to treat poultry. In a notice published elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the final decision withdrawing approval of this NADA.

DATES: This rule is effective September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Erik P. Mettler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION: On October 31, 2000, FDA's Center for Veterinary Medicine (CVM) proposed to withdraw the approval of the NADA 140–828 for the use in chickens and turkeys of enrofloxacin, an antimicrobial drug belonging to a class of drugs known as fluoroquinolones (65

FR 64954, October 31, 2000). On November 29, 2000, Bayer Corp. (Bayer), the sponsor of enrofloxacin (sold under the trade name Baytril® 3.23% Concentrate Antimicrobial Solution), requested a hearing on the proposed withdrawal. On February 20, 2002, the FDA's then Acting Principal Deputy Commissioner published a notice of hearing granting Bayer's request and identifying the factual issues that would be the subject of the evidentiary hearing (67 FR 7700, February 20, 2002). On March 21, 2002, the Animal Health Institute submitted a notice of participation under 21 CFR 12.45. Oral hearing for the purposes of cross-examination of witnesses was held at FDA from April 28 through May 7, 2003. On March 16, 2004, an FDA Administrative Law Judge (ALJ) issued an initial decision under 21 CFR 12.120. The ALJ determined that enrofloxacin had not been "shown to be safe under the conditions of use upon the basis of which the application was approved," as required under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) and ordered that the approval of the NADA for Baytril be withdrawn. Bayer and CVM each filed exceptions to the initial decision on May 17, 2004.

In a notice published elsewhere in this issue of the **Federal Register**, FDA is announcing the final decision withdrawing approval of the NADA held by Bayer Corp., Agriculture Division, Animal Health, Shawnee Mission, KS 66201. NADA 140–828, Baytril® 3.23% Concentrate Antimicrobial Solution provides for use of enrofloxacin to treat poultry under § 520.813 (21 CFR 520.813). Relevant information concerning tolerances for residues of enrofloxacin in edible tissues of poultry is under § 556.228(a) (21 CFR 556.228(a)).

Therefore, in accordance with the final decision withdrawing approval and section 512(i) of the act (21 U.S.C. 360(b)(i)), FDA is amending the regulations to remove §§ 520.813 and 556.228(a).

The agency has determined under 21 CFR 25.33(g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.813 [Removed]

■ 2. Section 520.813 is removed.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

§ 556.228 [Amended]

■ 4. Section 556.228 is amended by removing paragraph (a), by redesignating paragraph (b) as paragraph (a), and by adding and reserving new paragraph (b).

Dated: July 27, 2005.

Lester M. Crawford,

Commissioner of Food and Drugs.

[FR Doc. 05–15223 Filed 7–28–05; 2:31 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from North American Nutrition Companies, Inc., to Elanco Animal Health, A Division of Eli Lilly & Co.

DATES: This rule is effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov.*

SUPPLEMENTARY INFORMATION: North American Nutrition Companies, Inc., C.S. 5002, 6531 St., Rt. 503, Lewisburg, OH 45338, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 127–507 for TYLAN SULFA G Type A Medicated Article to Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285. Accordingly, the agency is amending the regulations in 21 CFR 558.630 to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.630 [Amended]

■ 2. Section 558.630 is amended in paragraph (b)(10) by removing "017790" and by adding in numerical sequence "000986".

Dated: July 11, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 05–15161 Filed 7–29–05; 8:45 am]

BILLING CODE 4160–01–S

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2005–10]

Recordation of Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

SUMMARY: This notice of policy decision clarifies three matters relating to practices concerning the recordation of documents pertaining to copyrights. First, it clarifies that a document will be indexed only under the titles appearing in the executed document. Second, it announces an interim practice on redaction of documents submitted for recordation, and states the intention of the Copyright Office to issue a notice of inquiry on the subject. Third, it provides notice that the Copyright Office is issuing a revised Document Cover Sheet.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor to the General Counsel. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Background Information

Since 1870, the Copyright Office has recorded assignments and other documents relating to copyright. Although this function has been performed by the Office for over 100 years, the recordation process and the Office records concerning recordation are frequently misunderstood.

Generally, the original document to be recorded is submitted to the Office. Recordation makes the contents of a document part of the public records of the Copyright Office. The recorded document speaks for itself. The Office creates a public record of the document; that record is available (and searchable) in the Office's online catalog. A document is indexed under the names of the parties and the titles of works listed in the executed document.

When a document is recorded in the Copyright Office, that document is given a unique identifying number. The document is imaged and made available to the public for inspection and copying. The original document is returned to the sender with a certificate of recordation. The Office does not make determinations about the validity or effect of any document. Such determinations are within the purview of the courts.

2. Indexing of Titles

It has been a longstanding written practice of the Copyright Office to require that the index of recorded documents will only include titles contained in the recorded document, and that principle is embodied in section 205 of the copyright law. In administering the 1909 Copyright Act, Compendium of Copyright Office Practices I (1973) (Compendium I) made it clear that only titles that appeared in the document would be indexed and therefore appear in the records of the Office. Section 12.3.5. IV. provided as follows: "Outside sources: A document will be indexed solely under the titles or other identifying matter it contains; no information or other information from sources outside the document will be supplied."

This principle was retained in the 1976 Copyright Act, which provides that recordation of a document provides constructive notice of the facts stated in the recorded document, but only if "the document, or material attached to it, *specifically identifies the work* to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work." 17 U.S.C. 205(c) (emphasis added).

It is clear from the earliest discussions of this provision in the process of revision of the Copyright Act that the indexing by the Copyright Office, and the resulting constructive notice, would apply only to titles identified in the document or its attachments. The Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, House Comm. on the Judiciary, 87th Cong., 1st Sess. House Committee Print (1961), contains the following statement concerning "blanket transfers":

> (2) Blanket transfers.—In some cases a recorded transfer will cover "all the copyrights" owned by the transferor with no identification of the individual works. It may be extremely difficult and time-consuming for a third person to ascertain whether the copyright in a particular work is covered by such a blanket transfer. We believe the statute should indicate that constructive notice is confined to the copyrights in works specifically identified by the recorded instrument.

Id. at 96. Thus, the Register's discussion clearly anticipated that the revised statute would not provide for constructive notice for works that are not specifically identified in the agreement or other document being recorded.

The provisions of the 1976 Act relating to documents, sections 204 and 205, were generally settled on in 1965. The 1965 Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill, House Comm. on the Judiciary, 89th Cong., 1st Sess. at 230, House Committee Print (1965), explains the decision reflected in the statute with respect to requiring the specific titles to be included in a document for that document to be given constructive notice:

> Subsection (c) of section 205 implements another recommendation of the Report by providing that recordation of a document constitutes constructive notice of the facts it states only if "the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; * * *."

Id. at 77.

The phrase "or material attached to it" means an appendix or attachment that was formally part of the executed document. It is a common practice for copyright transactions to include important terms or information in schedules, appendices, or other attachments as part of the document. This interpretation is consistent with the phrase "gives all persons constructive notice of the facts stated in the recorded document" appearing in the first sentence of section 205(c). It is also consistent with the Office's practice under the 1909 Copyright Act, and the legislative history as reflected in the 1961 Report of the Register of Copyrights, and the 1965 Supplementary Report of the Register of Copyrights. Moreover, such a practice is consistent with the requirement in section 205(a) that a recorded document bear the signature of the person who executed it (or be accompanied by a sworn certification that it is a true copy of the original, signed document): the only reasonable reading of that requirement is that it does not permit recordation to extend constructive notice to information that was not part of the document at the time it was executed.

Several years after enactment of the revision of the 1976 copyright law, the Copyright Office issued Compendium of Copyright Office Practices II (1984) (Compendium II), which implemented procedures with respect to the new copyright law. Chapter 1600 concerned recordation of documents, and subsections 1607.02(c)–1607.04 provided as follows:

> **1607.02(c)**
>
> Blanket transfer. A blanket transfer, in which no individual titles are given, will be recorded without question. Example: "Copyrights in all the published works of John Doe are hereby assigned. * * *"
>
> **1607.03**
>
> No titles given. When a document in which no titles are specified is recorded, the catalog entry will contain the notation: "No Titles Given."
>
> **1607.04**
>
> Outside sources. A document will be indexed solely under the titles or other

identifying matter it contains; no information from sources outside the document will be supplied. Thus, for example, the Copyright Office will not index titles given only in a covering letter.

In order to streamline processing, the office suspended Chapter 1600 of Compendium II regarding recordation of documents in 1992. 57 FR 27074 (1992). In 1998, it issued a new Compendium Chapter 1600. The treatment of blanket transfers in former subsections 1607.02(c)–1607.4 was simplified in new section 1608.03, which states: "Outside sources. A document will be indexed only under the titles or other identifying matter it contains." This language actually returned to the language in Compendium I regarding practices under the 1909 Copyright Act. This reintroduction of the old language on "outside sources" into the new Compendium chapter meant no change in policy was intended.

However, the Office has discovered that an informal practice had evolved in the Documents Section which permitted a party submitting a document to attach a listing of titles to a document which, as executed, lacked titles, and to index titles that did not appear in the document if those titles were listed in a document cover sheet supplied by the Office. It is not clear when, how or why this practice commenced. It has been discontinued.

Copyright owners who wish to have titles of works appear in the index of recorded documents are cautioned to include a list of titles either in the body of the document or as an attachment made to the document before execution.

3. Redaction of Documents

On January 4, 1978, the Copyright Office issued interim regulations implementing recordation procedures. 43 FR 771 (1978). The Office regulations require that a document submitted for recordation must be "complete on its face, and include any schedules, appendixes, or other attachments referred to in the document as being part of it." This provision has been included in the regulations since January 4, 1978. 43 FR 771 (1978).

In commenting on the interim regulation, the Authors League of America, Inc. requested that the requirement of completeness be clarified. 43 FR 35044 (1978). As a result, section 201.4(c)(2) was introduced into the regulation relating to the policies regarding attachments, and these clarifications remain as part of the regulations today. The commentary described these additions as "our actual practices in the area." Id. at 35044. The current regulation reads as follows:

(2) To be recordable, the document must be complete by its own terms.

(i) A document that contains a reference to any schedule, appendix, exhibit, addendum, or other material as being attached to the document or made a part of it shall be recordable only if the attachment is also submitted for recordation with the document or if the reference is deleted by the parties to the document. If a document has been submitted for recordation and has been returned by the Copyright Office at the request of the sender for deletion of the reference to an attachment, the document will be recorded only if the deletion is signed or initialed by the persons who executed the document or by their authorized representatives. In exceptional cases a document containing a reference to an attachment will be recorded without the attached material and without deletion of the reference if the person seeking recordation submits a written request specifically asserting that: (A) The attachment is completely unavailable for recordation; and (B) the attachment is not essential to the identification of the subject matter of the document; and (C) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference. In such exceptional cases, the Copyright Office records of the document will be annotated to show that recordation was made in response to a specific request under this paragraph.

(ii) If a document otherwise recordable under this title indicates on its face that it is a self-contained part of a larger instrument (for example: If it is designated "Attachment A" or "Exhibit B"), the Copyright Office will raise the question of completeness, but will record the document if the person requesting recordation asserts that the document is sufficiently complete as it stands.

(iii) When the document submitted for recordation merely identifies or incorporates by reference another document, or certain terms of another document, the Copyright Office will raise no question of completeness, and will not require recordation of the other document. 37 CFR 201.4(c)(2). In addition to the stated practices on attachments, there has been a longstanding practice of allowing financial information (*e.g.*, a dollar amount) to be removed or blacked out. However, over the years larger redactions have been allowed. The Office generally has required that all pages be accounted for, meaning that if the text of an entire page was deleted, a blank page with the page number should be submitted at the appropriate place in the document with an indication that the entire page was redacted. This general policy, however, has been inconsistently applied.

The Copyright Office has concluded that the requirement of completeness as expressed in the regulation and the informal practice of permitting substantial redactions are inconsistent. If the Office is to continue its present practice of permitting substantial redactions, such as policy and the scope of the allowed redaction should be explicitly stated in the regulations. Moreover, opportunity for public comment on this important policy should be provided through a notice of inquiry. Before the Office issues such a notice of inquiry, further study is necessary to determine the origins, purpose and extent of the completeness doctrine as expressed in the regulation and the redaction practices. In the interim, the Copyright Office will permit redactions under following terms and conditions:

Interim Policy on Redaction of Documents. Documents containing blank or blocked-out sections, with the deletions initialed or labeled "redacted," will be accepted for recordation if the document otherwise meets the recordation requirements and each page is accounted for, even if entire pages are redacted. Documents with missing pages will be returned as incomplete. The policies with respect to attachments as stated in 37 CFR 201.4(c)(2) will be applied, except that redactions will also be permitted in an attachment.

Notwithstanding this interim policy, persons submitting documents for recordation are cautioned that they would be well-advised to be conservative in the practice of redacting material from the submitted documents, limiting their omissions to small amounts of sensitive information, such as financial terms. It is possible that excessive redaction might deprive the document of the constructive notice provided under section 205. The Office notes that under section 205(c), constructive notice applies only to "facts stated in the recorded document." A document which has been substantially redacted would necessarily limit constructive notice to that which appears in the document as recorded and could raise questions as to whether the Office's regulations were complied with—that is, whether the Office should have recorded the document with such redactions. The Office's interim policy should not be read as suggesting that it is appropriate to redact large portions from a document submitted for recordation, and it is possible that a court would refuse to recognize constructive notice for such a document, or in some way limit the constructive notice. After the Office has completed its inquiry into this issue, taking into account comments it receives from the public in the future, it is possible that the Office may decide to eliminate the possibility of redaction entirely, or to limit its application. It is therefore advised that if redaction is used at all, it be limited to a small amount of sensitive information, such as financial terms.

4. Revised Document Cover Sheet

In 1993, the Copyright Office made available an optional Document Cover Sheet in order to assist in recording documents. 58 FR 3297 (1993). It was anticipated that cataloging would be simplified because titles and parties

would be more readily accessible from the cover sheet than from the document itself. It was discovered, however, that often information was designated in the cover sheet which did not appear in the document. As a result, the Copyright Office had to limit indexing strictly to information appearing in the document, and copyright owners may have misinterpreted the purpose of the cover sheet as permitting the addition to the public record of information outside of the document by listing it in the cover sheet.

Despite the problems, the document cover sheet has been useful in a number of areas, particularly in providing a simple means to certify that a copy of a document bearing original signatures is a true and correct copy of the original document. For these reasons, the Copyright Office has issued a revised Document Cover Sheet retaining features which will assist in the processing of recording documents. While the revised Document Cover Sheet asks for identification of one party and one title for the purpose of connecting the Document Cover Sheet to the document, indexing will be based solely on the information appearing in the document. The Document Cover Sheet will remain optional, although its use is encouraged because it will assist in the recordation of submitted documents. Persons using the Document Cover Sheet should ensure that they use only copies dated 1/2005 or later, as indicated at the bottom of the page. Copies may be found on the Copyright Office Web site at *http://www.copyright.gov/forms/formdoc.pdf*. The Copyright Office continues to request that two copies of the Document Cover Sheet be submitted since one copy is used for imaging purposes, and the other copy is used to prepare the envelope for returning the document.

Dated: July 26, 2005.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 05–15137 Filed 7–29–05; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0005;FRL–7937–1]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the Governor of Colorado with a letter dated April 12, 2004. This revision replaces an August 19, 1998 submittal from the Governor and updates the Long-Term Strategy of the Visibility SIP to establish strategies, activities, and plans that constitute reasonable progress toward the National visibility goal. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on September 30, 2005, without further notice, unless EPA receives adverse comment by August 31, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. R08–OAR–2004–CO–0005, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. R08–OAR–2004–CO–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do no submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA's Regional Materials in EDOCKET and Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through 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 of CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on

the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region, 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region 8, (303) 312–6449, *platt.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information
II. Background
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Definitions

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

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

(ii) The word *we* or initials *EPA* mean the United states Environmental Protection Agency.

(iii) The initials *SIP* mean State Implementation Plan.

(iv) The word *State* or initials *CO* mean the State of Colorado, unless the context indicates otherwise.

(v) The initials *FLM* mean Federal Land Manager.

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

I. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

II. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

III. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

IV. Describe any assumptions and provide any technical information and/or data that you used.

V. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

VIII. Make sure to submit your comments by the comment period deadline identified.

II. Background

Section 169A of the Clean Air Act (CAA) [1], 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas [2] (referred to herein as the "National goal" "National visibility goal"). Section 169A called for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its SIP to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal (*see* CAA section 169A(b)(2)). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to meet the visibility protection requirements of the CAA.

We promulgated regulations that required affected States to, among other things, (1) coordinate development of SIPs with appropriate FLMs; (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10–15 years) strategy to assure reasonable progress toward the National visibility goal. *See* 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300–307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the Long-Term Strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. *See* 40 CFR 51.306(c).

On July 12,1985 (50 FR 28544) and November 24, 1987 (52 FR 45132), we disapproved the SIPs of states, including Colorado, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements), 51.305 (visibility monitoring), and 51.306 (visibility long-term strategy). We also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1).

The Governor of Colorado submitted a SIP revision for visibility protection on December 21, 1987, which met the criteria of 40 CFR 51.302, 51.305, and 51.306 for general plan requirements, monitoring strategy, and long-term strategies. We approved this SIP revision in the August 12, 1988, **Federal Register** (53 FR 30428), and this revision replaced the Federal plans and regulations in the Colorado Visibility SIP. The Governor of Colorado submitted a subsequent SIP revision for visibility protection with a letter dated November 18, 1992, which we approved on October 11, 1994 (59 FR 51376).

After Colorado's 1992 Long-Term Strategy review, the U.S. Forest Service (USFS) certified visibility impairment at Mt. Zirkel Wilderness Area (MZWA) and named the Hayden and Craig generating stations in the Yampa Valley of Northwest Colorado as suspected sources. The USFS is the FLM for MZWA. This certification was issued on

[1] The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. *See* section 302(i) of the Act, 42 U.S.C. 7602(i).

July 14, 1993. Hayden Station was addressed in the State's August 23, 1996 Long-Term Strategy review and revision (*see* 62 FR 2305, January 16, 1997). Craig Generating Station was addressed in the State's April 19, 2001 Long-Term Strategy review and revision (*see* 66 FR 35374, July 5, 2001).

III. August 19, 1998 Submittal

With an August 19, 1998, letter, the Governor of Colorado submitted a revision to the Visibility SIP. This revision was made to fulfill the requirements to periodically review and, as appropriate, revise the Long-Term Strategy for visibility protection. However, the State requested that we delay action on the 1998 submittal because it had not yet adopted the necessary requirements for the Craig Generating Station. As noted above, those Craig Generating Station requirements were adopted by the State in its April 19, 2001, Long-Term Strategy revision and have been approved by EPA (*see* 66 FR 35374, July 5, 2001). As a result, the State has now replaced its August 19, 1998, submittal with the April 12, 2004, submittal that is the subject of this document.

IV. April 12, 2004 Submittal

With an April 12, 2004, letter, the Governor of Colorado submitted a revision to the Long-Term Strategy of Colorado's SIP for Class I Visibility Protection, contained in Part II of the January 31, 2002 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection." The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the CAA similarly provides that each revision to an implementation plan submitted by a State under the CAA must be adopted by such State after reasonable notice and public hearing.

After providing adequate notice, the Colorado Air Quality Control Commission (AQCC) held a public hearing on February 21, 2002, to consider the proposed revision to the Long-Term Strategy of the Colorado Visibility SIP and adopted the revision. We have reviewed the SIP revision and have determined that it adequately demonstrates that the State is making reasonable progress toward the National visibility goal.

The SIP revision is contained in Part II of the January 31, 2002 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection." Part II, "Revision of the Long-Term Strategy," incorporates by reference requirements for the Hayden and Craig Generating Stations, including emissions limits and schedules of compliance, as previously approved by EPA on January 16, 1997 (*see* 62 FR 2305), and July 5, 2001 (*see* 66 FR 35374). Part II also contains provisions that are explanatory and analyses that are required by section 169A of the CAA, Federal visibility regulations (40 CFR 51.300 to 51.307), and/or the Colorado visibility SIP. These requirements address existing impairment, ongoing air pollution programs, smoke management practices, prevention of future impairment, and FLM consultation and communication. These revisions are consistent with Federal requirements and demonstrate reasonable further progress toward the National visibility goal. Therefore, they are approvable.

V. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The Colorado SIP revisions that are the subject of this document are consistent with Federal requirements and rules. These revisions were made to demonstrate reasonable further progress toward the National visibility goal, as required by the Act. They do not interfere with the attainment or maintenance of the NAAQS or other applicable requirements of the Act.

VI. Final Action

We have reviewed the adequacy of the State's revision to the Long-Term Strategy of Colorado's SIP for Class I Visibility Protection, contained in Part II of the January 31, 2002 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection," as submitted by the Governor with a letter dated April 12, 2004. We are approving the revision as demonstrating reasonable further progress toward the National visibility goal as required by 40 CFR 51.306.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective September 30, 2005, without further notice unless the Agency receives adverse comments by August 31, 2005. if the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes,

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be field, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 30, 2005.

Carol Rushin,

Acting Regional Administrator, Region 8.

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

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(105) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the Long-Term Strategy of Colorado's State Implementation Plan for Class I Visibility Protection (Visibility SIP), as submitted by the Governor on April 12, 2004. The revisions update strategies, activities, and plans that constitute reasonable progress toward the National visibility goal.

(i) Incorporation by reference.

(A) "Revision of the Long-Term Strategy," (Part II of the January 31, 2002 document entitled "Long-Term Strategy Review and Revision of Colorado's State Implementation Plan for Class I Visibility Protection,") effective on February 21, 2002.

[FR Doc. 05–15054 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–UT–0002; FRL–7939–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah. On October 19, 2004, the Governor of Utah submitted revisions to Utah's Rule R307–110–12, "Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide," which incorporates a revised maintenance plan for the Salt Lake City carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity budgets for the years 2005 and 2019. In addition, the Governor submitted revisions to Utah's Rule R307–110–33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," which incorporates a revised vehicle inspection and maintenance program for Salt Lake County. In this action, EPA is approving the Salt Lake City CO revised maintenance plan, the revised transportation conformity budgets, the revised vehicle inspection and maintenance program for Salt Lake County, and the revisions to rules R307–110–12 and R307–110–33. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on September 30, 2005 without further notice, unless EPA receives adverse comment by August 31, 2005. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2005–UT–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic public docket and

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

- E-mail: *long.richard@epa.gov, russ.tim@epa.gov, and mastrangelo.domenico@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME Docket Number R08–OAR–2005–UT–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. EPA's Regional Materials in EDOCKET and federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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Definitions

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

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

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

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

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

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

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. What Is the Purpose of This Action?

In this action, we are approving a revised maintenance plan for the Salt

Lake City CO attainment/maintenance area that is designed to keep the area in attainment for CO through 2019, we're approving revised transportation conformity motor vehicle emissions budgets (MVEBs), and we're approving revisions to the vehicle inspection and maintenance program for Salt Lake County. We are also approving revisions to Utah's Rule R307–110–12, "Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide," and Rule R307–110–33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," which merely incorporate the State's SIP revisions to the Salt Lake City CO maintenance plan and the vehicle inspection and maintenance program for Salt Lake County, respectively.

We approved the original CO redesignation to attainment and maintenance plan for the Salt Lake City area on January 21, 1999 (*see* 64 FR 3216).

The original Salt Lake City CO maintenance plan that we approved on January 21, 1999 (hereafter January 21, 1999 maintenance plan) utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the new, updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). On November 12, 2002, EPA's Office of Transportation and Air Quality (OTAQ) issued an updated version of the MOBILE6 model, MOBILE6.2, and notified Federal, State, and Local agency users of the model's availability. MOBILE6.2 contained additional updates for air toxics and particulate matter. However, the CO emission factors were essentially the same as in the MOBILE6 version of the model.

For the revised maintenance plan, the State recalculated the CO emissions for the 1993 attainment year, projected emission inventories for 2004, 2005, 2008, 2011, 2014, 2017, and 2019, and calculated all the mobile source emissions using MOBILE6.2. Based on projected significant mobile source emission reductions for the interim years between 2005 and 2019, the State's revised maintenance demonstration is also able to accommodate the relaxation of certain provisions for newer vehicles in the Salt Lake County Vehicle Inspection and Maintenance (I/M) Program while continuing to demonstrate maintenance of the CO NAAQS. Thus, the State has asked us to approve a revision to "Vehicle Inspection and Maintenance Program, Salt Lake County" (hereafter referred to as "Salt Lake County I/M program" or "I/M program") that allows vehicles less than six years old to be inspected every other year instead of annually. The State calculated a CO MVEB for 2005 and applied a selected amount of the available safety margin to the 2005 transportation conformity MVEB. The State calculated a CO MVEB for 2019 and beyond and also applied a selected amount of the available safety margin to the 2019 and beyond transportation conformity MVEB. We have determined that all the revisions noted above are Federally-approvable, as described further below.

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

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

The Utah Air Quality Board (UAQB) held a public hearing for the revised Salt Lake City CO maintenance plan, the revised Salt Lake County vehicle inspection and maintenance program, and the revisions to Rule R307–110–12 and Rule R307–110–33 on August 18, 2004. The revised plan elements and rules were adopted by the UAQB on October 6, 2004. The revised CO maintenance plan and Rule R307–110–12 became State effective on December 2, 2004 and the revised vehicle inspection and maintenance program and Rule R307–110–33 became State effective on October 7, 2004. The Governor submitted these SIP revisions to us on October 19, 2004. Additional administrative materials were submitted to us by the State on March 3, 2005.

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

IV. EPA's Evaluation of the Revised Maintenance Plan

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

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

As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. The January 21, 1999 maintenance plan relied on ambient air quality data from 1993 through 1997. In our consideration of the revised Salt Lake City maintenance plan, submitted by the Governor on October 19, 2004, we reviewed ambient air quality data from 1993 through 2004. The Salt Lake City area shows continuous attainment of the CO NAAQS from 1993 to present. All of the above-referenced air quality data are archived in our Air Quality System (AQS).

(b) Using the MOBILE6.2 emission factor model, the State revised the attainment year inventory (1993) and provided projected emissions inventories for the years 2004, 2005, 2008, 2011, 2014, 2017, and 2019.

The revised maintenance plan that the Governor submitted on October 19, 2004, includes comprehensive inventories of CO emissions for the Salt Lake City area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. More detailed descriptions of the revised 1993 attainment year inventory, and the projected emissions inventories for 2004, 2005, 2008, 2011, 2014, 2017, and 2019, are documented in the maintenance plan in section IX.C.7.b entitled "Emission Inventories and Maintenance Demonstration," and in the State's Technical Support Document (TSD). The State's submittal contains emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures

from the 1993 attainment year and the projected years are provided in Table IV—1 below.

TABLE IV—1

[Summary of CO emissions in tons per day for the Salt Lake City area]

Source category	1993	2004	2005	2008	2011	2014	2017	2019
Point*	0	0	0	0	0	0	0	0
Area	15.34	7.57	7.54	7.48	7.50	7.49	7.42	7.34
Non-Road	34.84	38.52	39.23	41.13	43.08	45.02	47.01	48.37
	295.21	176.14	168.66	130.01	118.19	110.30	106.35	104.08
Total	345.39	222.23	215.43	178.62	168.77	162.81	160.78	159.79

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

The revised mobile source emissions show that the largest change from the original January 21, 1999 maintenance plan and this is primarily due to the use of MOBILE6.2 instead of MOBILE5a. The MOBILE6.2 modeling information is contained in the State's TSD (see "Mobile Source 1993 Base Year Inventory Using MOBILE6.2," pages 2.b.ii.5–1 through 2.b.ii.5–4; and "Mobile Source Projection Year Inventories Using MOBILE6.2, pages 2.c.iv–1 through 2.c.iv–4) and on a compact disk produced by the State (see "Supplemental Mobile Source Data (CD–ROM)," section 2.d.). A copy of the State's compact disk is available upon request to EPA. The compact disk contains much of the modeling data, MOBILE6.2 input-output files, fleet makeup, MOBILE6.2 input parameters, and other information, and is included with the docket for this action. Other revisions to the mobile sources category resulted from revised vehicle miles traveled (VMT) estimates provided to the State by the Wasatch Front Regional Council (WFRC) which is the metropolitan planning organization (MPO) for the Salt Lake City area. In summary, the revised maintenance plan and State TSD contain detailed emission inventory information that was prepared in accordance with EPA guidance and is acceptable to EPA.

(c) The State revised the January 21, 1999 Salt Lake City maintenance plan.

The January 21, 1999 CO maintenance plan utilized the then applicable EPA mobile sources emission factor model, MOBILE5a. On January 18, 2002, we issued policy guidance for States and local areas to use to develop SIP revisions using the updated version of the model, MOBILE6. The policy guidance was entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" (hereafter, January 18, 2002 MOBILE6 policy). Additional policy guidance regarding EPA's MOBILE model was issued on November 12, 2002, which notified Federal, State, and local agencies that the updated MOBILE6.2 model was now available and was the recommended version of the model to be used. We note that the State used the MOBILE6.2 model to revise the Salt Lake City maintenance plan.

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

The State could have used the streamlined approach described in our January 18, 2002 MOBILE6 policy to update the Salt Lake City carbon monoxide MVEBs. However, the Governor's October 19, 2004 SIP submittal instead contained a completely revised maintenance plan and maintenance demonstration for the Salt Lake City area. That is, all emission source categories (point, area, non-road, and on-road mobile) were updated using the latest versions of applicable models (including MOBILE6.2), transportation data sets, emissions data, emission factors, population figures and other demographic information. We have determined that this fully revised maintenance plan SIP submittal exceeds the requirements of our January 18, 2002 MOBILE6 policy and, therefore, our January 18, 2002 MOBILE6 policy is not relevant to our approval of the revised maintenance plan and its MVEBs.

As discussed above, the State prepared a revised attainment year inventory for 1993, and new emission inventories for the years 2004, 2005, 2008, 2011, 2014, 2017 and 2019. The results of these calculations are presented in Table 3 "Emissions Projections for Interim Years" on page 5 of the revised Salt Lake City maintenance plan (Utah SIP Section IX, Part C.7) and are also summarized in our Table IV–1 above. In addition, we note that the State modified the Salt Lake County I/M program to specify that vehicles less than six years old are to have their emissions tested every other year instead of annually (see our discussion and evaluation in section VI below.)

The State performed an analysis of this relaxation of the Salt Lake I/M program and determined that this change could be implemented for Salt Lake County, beginning in 2005, without jeopardizing maintenance of the CO NAAQS. As noted below in section VI, we reviewed the State's methodology and analysis and we have determined they are acceptable. The effects of this I/M rule relaxation were incorporated into the State's mobile sources modeling with MOBILE6.2, as applicable to the years 2005, 2008, 2011, 2014, 2017, and 2019, and these results are reflected in the Table 3 of the maintenance plan and in our Table IV–1 above.

We have determined that the State has demonstrated, using MOBILE6.2, that mobile source emissions continuously decline from 1993 to 2019 and that the total CO emissions from all source categories, projected for years 2004, 2005, 2008, 2011, 2014, 2017 and 2019, are all below the 1993 attainment year level of CO emissions. Therefore, we are approving the revised maintenance plan as it demonstrates maintenance of the CO NAAQS from 1993 through 2019, while allowing the I/M relaxations from the revisions to the Salt Lake County I/M program.

(d) Monitoring Network and Verification of Continued Attainment.

Continued attainment of the CO NAAQS in the Salt Lake City area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in section IX.C.7.e: "Monitoring Network/Verification of Continued Attainment" of the revised Salt Lake City CO maintenance plan. In section IX.C.7.e, the State commits to continue the operation of the CO monitor in the Salt Lake City area, in accordance with the provisions of 40 CFR 58, and to annually review this monitoring network and gain EPA approval before making any changes.

Also, in section IX.C.7.e and IX.C.7.f, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by the WFRC. Since regular revisions to Salt Lake City's transportation improvement programs and long range transportation plans must go through a transportation conformity finding, the State will use this process to periodically review the Vehicle Miles Traveled (VMT) and mobile source emissions projections used in the revised maintenance plan. This regional transportation conformity process is conducted by WFRC in coordination with Utah's Division of Air Quality (UDAQ), the UAQB, the Utah Department of Transportation (UDOT) and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements. We note that our final rulemaking approval renders the State's commitments federally enforceable.

(e) Contingency Plan.

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

As stated in section IX.C.7.f of the revised maintenance plan, the contingency measures for the Salt Lake City area will be triggered by a violation of the CO NAAQS. However, the State approaches the development and implementation of contingency measures from a two-step process; first, upon an exceedance of the CO NAAQS and second, upon a violation of the CO NAAQS.

The UDAQ will notify the Salt Lake City government and EPA of an exceedance of the CO NAAQS generally within 30, but no more than 45 days. Upon notification of a CO exceedance, the UDAQ in coordination with the WFRC, will begin evaluating and developing potential contingency measures that are intended to correct a violation of the CO NAAQS. This process will be completed within six months of the notification that an exceedance of the CO NAAQS has occurred. If a violation of the CO NAAQS has occurred, a public hearing process will begin at the local and State levels. Should the UAQB conclude that the implementation of local measures will prevent further exceedances or violations of the CO NAAQS, the UAQB may approve or endorse local measures without adopting State requirements. If, however, the UDAQ decides locally-adopted contingency measures are inadequate, the UDAQ will recommend to the UAQB that they instead adopt State-enforceable measures as deemed necessary to address the current violation(s) and prevent additional exceedances or violations. Regardless of whether the selected contingency measures are local- or State-adopted, the necessary contingency measures will be implemented within one year of a CO NAAQS violation. The State also indicates in section IX.C.7.f that any State-enforceable measure will become part of the next revised maintenance plan submitted for EPA approval.

The potential contingency measures identified in section IX.C.7.f(3) of the revised Salt Lake City CO maintenance plan include: (1) A return to annual inspections for all vehicles; (2) improvements to the current I/M program in the Salt Lake City area; (3) mandatory employer-based travel reduction programs as allowed by statute; (4) and other emission control measures appropriate for the area.

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

(f) Subsequent Maintenance Plan Revisions.

Section IX.C.7.g of the State's revised maintenance plan states that:

"No maintenance plan revision will be needed after 2019, as that is the 20th year following EPA approval of the original maintenance plan. No further maintenance plan is needed after successful maintenance of the standard for 20 years. However, the State will update the Plan if conditions warrant."

This is essentially a correct interpretation of the length of time that an area is required to demonstrate maintenance of the CO NAAQS as provided in sections 175A(a) and 175A(b) of the CAA. Although this language in section IX.C.7.g of the revised Salt Lake City CO maintenance plan does not address the specific requirements for the submittal of a revised maintenance plan as stated in section 175A(b) of the CAA, we have concluded it is sufficient to meet the intent of section 175A(b).

The requirement for a subsequent maintenance plan submittal appears in section 175A(b) of the CAA which states "8 years after redesignation of any area as an attainment area under section 107(d), the State shall submit to the Administrator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a)." As EPA redesignated the Salt Lake City CO nonattainment area to attainment on January 21, 1999, a subsequent maintenance plan submittal from the State, to address the requirements of section 175A(b) of the CAA, would normally be submitted to us by January 21, 2007. However, as the Governor's October 19, 2004 submittal of the revised Salt Lake City CO maintenance plan provides a sufficiently robust maintenance demonstration through 2019, we find that this revised maintenance plan addresses the requirements of section 175A(b) of the CAA.

Regardless of the requirements of section 175(A) of the CAA, though, other sections of the CAA, presently in place or adopted in the future, may require the State to revise the maintenance plan and/or Utah SIP more generally, to ensure that the area continues to meet the CO NAAQS. Section 110(a)(1) of the CAA is an example of such a provision. Also, we interpret the quoted statement above as merely indicating that section 175A does not require a further maintenance plan revision after 2019; we do not interpret it to mean that the maintenance plan will automatically terminate after 2019. EPA's

longstanding interpretation is that SIP provisions remain in place until EPA approves a revision to such provisions. The only exception is if the SIP contains explicit language that some or all of its provisions will terminate upon a specific future date. The maintenance plan does not contain such explicit language. Based on our interpretation, section IX.C.7.g of the State's revised maintenance plan is acceptable to us.

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

V. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation (40 CFR part 93) requires a demonstration that emissions from the long range transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–62196) and in the sections of the rule referenced above.

With respect to maintenance plans, our conformity regulation requires that MVEB(s) must be established for the last year of the maintenance plan and may be established for any other years deemed appropriate (40 CFR 93.118). For transportation plan analysis years after the last year of the maintenance plan (in this case 2019), a conformity determination must show that emissions are less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the implementation plan. EPA's conformity regulation (40 CFR 93.124) also allows the implementation plan to quantify explicitly the amount by which motor vehicle emissions could be higher while still demonstrating compliance with the maintenance requirement. The implementation plan can then allocate some or all of this additional "safety margin" to the emissions budget(s) for transportation conformity purposes.

Section IX.C.7.d "Mobile Source Carbon Monoxide Emissions Budget for Transportation Conformity" of the revised Salt Lake City CO maintenance plan briefly describes the applicable transportation conformity requirements, provides MVEB calculations, identifies "safety margin," and indicates that the UAQB elected to apply some of the "safety margin" to the MVEB(s) for 2005 and 2019.

In section IX.C.7.d of the revised maintenance plan, the State evaluated two MVEBs: A budget for 2005, and a budget applicable to the maintenance year 2019. For the 2019 MVEB, the State subtracted the total estimated 2019 emissions (from all sources) of 159.79 Tons Per Day (TPD) from the 1993 attainment year total emissions of 345.39 TPD. This produced a "safety margin" of 185.60 TPD. The State then reduced this "safety margin" by 11.06 TPD. The identified "safety margin" of 174.54 TPD for 2019 was then added to the estimated 2019 mobile sources emissions, 104.08 TPD, to produce a 2019 MVEB of 278.62 TPD. For the 2005 MVEB, the State subtracted the total estimated 2005 emissions (from all sources) of 215.43 TPD from the 1993 attainment year total emissions of 345.39 TPD. This produced a "safety margin" of 129.96 TPD. The State then reduced this "safety margin" by 20 TPD. The identified "safety margin" of 109.96 TPD for 2005 was then added to the estimated 2005 mobile sources emissions, 168.66 TPD, to produce a 2005 MVEB of 278.62 TPD.

As noted above, the Governor submitted the original Salt Lake City CO maintenance plan to us on December 9, 1996 and we approved it on January 21, 1999 (see 64 FR 3216.) This original maintenance plan demonstrated maintenance of the CO NAAQS through 2006. While our conformity rule (see 40 CFR part 93) does not require a MVEB for years other than the last year of the maintenance period, states have the option to establish MVEBs for other years too. The State's December 9, 1996, maintenance plan established MVEB(s) for 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 and 2016. As noted in our January 21, 1999 action, the State also alluded to a MVEB for the period 2007 to 2016. Because the maintenance plan did not adequately identify such a MVEB, we approved no MVEB for 2007 to 2016. We stated in our January 21, 1999 action that the 2006 MVEB would be used for any transportation conformity determinations for the period 2007 through 2015 (see 64 FR 3216, pages 3221 and 3222.)

The revised Salt Lake City CO maintenance plan, that was submitted to us on October 19, 2004, states, "This plan retracts the emissions budgets for 2005–2016 that were included in the original Salt Lake City Carbon Monoxide Maintenance Plan submitted to EPA in 1996." EPA interprets this language to mean that the State is retracting the 1996 maintenance plan budgets for years 2005, 2006 and 2016. The October 19, 2004 maintenance plan establishes new MVEBs for 2005 and 2019 based on MOBILE6.2. In part, the State chose these budget years and retracted budgets for other years based on input from Region 8.

However, Region 8 recently discovered that we misinterpreted the CAA requirements regarding initial maintenance plan MVEBs and mistakenly advised the State that it could entirely remove a MVEB for 2006 from the maintenance plan. Instead, EPA's interpretation is that a MVEB for the last year of the first maintenance period must be retained as a specific MVEB year when a second maintenance plan is submitted to meet the requirements of section 175A(b) of the CAA. We should have advised the State to retain a MVEB for 2006.[1]

As described below, however, we believe the lack of a 2006 MVEB in this case is not significant and that approval of the revised maintenance plan and MVEBs is still warranted. In section IV of this action, we describe how the revised Salt Lake City CO maintenance plan meets our criteria for approval and that the State has demonstrated maintenance of the CO NAAQS for the entire maintenance period through 2019. Essentially, the State demonstrated that total CO emissions in future years through 2019 will be less than the 1993 attainment year level of CO emissions. Table V–1 below, which is taken from Table 3 of section IX.C.7.b of the State's revised maintenance plan, illustrates this point. We have also included in this table the available safety margin that the State could have applied to the MVEB in each projection year.

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

TABLE V–1

[All emissions are in tons per day of CO]

Year	Area sources	On-road mobile sources	Non-road sources	Point sources*	Total emissions	Available safety margin
1993	15.34	295.21	34.84	0	345.39	.....
2004	7.57	176.14	38.52	0	222.23	123.16
2005	7.54	168.66	39.23	0	215.43	129.96
2008	7.48	130.01	41.13	0	178.62	166.77
2011	7.50	118.19	43.08	0	168.77	176.62
2014	7.49	110.30	45.02	0	162.81	182.58
2017	7.42	106.35	47.01	0	160.78	184.61
2019	7.34	104.08	48.37	0	159.79	185.60

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

Based on the information from Table V–1 above, Table V–2 below illustrates the State-specified MVEBs for 2005 and 2019. It also shows that, based on available safety margin, the State could have specified the same budget as it specified for 2005 and 2019 in any of the other projection years—278.62 tons per day of CO. The emissions estimates for 2008, 2011, 2014 and 2017 are provided in Table V–2 for illustrative purposes only; emissions estimates for these years do not represent MVEBs.

TABLE V–2

[(All emissions are in tons per day of CO) (MVEBs are shown in **bold**)]

Year	On-road source emissions	Available safety margin	On-road mobile source emissions with allocated safety margins	Remaining safety margin
2005**	168.66	129.96	**278.62**	20.00
2008	130.01	166.77	278.62	18.16
2011	118.19	176.62	278.62	16.19
2014	110.30	182.58	278.62	14.26
2017	106.35	184.61	278.62	12.34
2019**	104.08	185.60	**278.62**	11.06

**Emissions estimates for 2005 and 2019 represent MVEBs established in the CO maintenance plan.

It is evident from the emissions trends from 2005 forward, and from the amount of remaining safety margin in 2005 and 2008, that the State could have established 278.62 tons per day of CO as the 2006 MVEB too. In other words, the 2005 MVEB is reasonably representative of 2006.

A 2006 MVEB would have applied for any conformity determination for analysis years between 2006 and 2019. The 2005 MVEB must be used for any conformity determination for analysis years between 2005 and 2019. (See 40 CFR 93.118(b)(2)(iv).) In other words, the elimination of the 2006 MVEB has limited, if any, practical effect. For a conformity analysis of any transportation plan or program, there will still be a quantitative budget analysis for any analysis years between 2005 and 2019, as required by 40 CFR 93.118(b), and conformity will have to be shown to a MVEB of 278.62 tons per day of CO, the same MVEB the State could have specified for 2006.

We also note that the 2005 MVEB is reasonably representative of 2009. This was the year for which EPA extracted data from the State's TSD in its January 21,1999 action to meet the 10-year maintenance requirement in section 175A(a) of the CAA. See 64 FR 3216. Normally, the initial maintenance plan would have established a MVEB for 2009, and the current maintenance plan should then have included a MVEB for 2009. However, Table V–2 above shows that a budget identical to the 2005 MVEB of 278.62 tons per day of CO could have also been established in 2008 and 2011. Based on our discussion above relative to MVEB for 2005 and 2006, and the information from Table V–2, it is evident that the 2005 MVEB could have been established for 2009 as well. For the same reasons that the lack of a 2006 MVEB has limited, if any, practical effect, the lack of a 2009 MVEB also has limited, if any, practical effect.

Pursuant to § 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source emissions budgets. EPA reviewed the revised Salt Lake City CO maintenance plan's emission budget for 2019 for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budget was adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Utah Division of Air Quality May 2, 2005, and was announced in the **Federal Register** on May 31, 2005 (70 FR 30946). As a result of this adequacy finding, the 2019 budget took effect for conformity determinations in the Salt Lake City area on June 15, 2005. However, we note that we are not bound by this determination in acting on the revised Salt Lake City CO maintenance plan.

We have concluded that the State has satisfactorily demonstrated continued maintenance of the CO NAAQS while using transportation conformity MVEBs of 278.62 TPD for 2005 and 2019. Therefore, we are approving the transportation conformity MVEB of 278.62 TPD of CO, for the Salt Lake City attainment/maintenance area, for 2005 and 2019.

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

In developing the Salt Lake City revised CO maintenance plan, the State revised Section X, Part C, of the Utah State Implementation Plan, "Vehicle Inspection and Maintenance Program, Salt Lake County," to go from an annual to an every-other-year testing program for vehicles less than six years old.

The Salt Lake County I/M program revisions adopted by the UAQB on October 6, 2004, State effective on October 7, 2004, and submitted by the Governor on October 19, 2004, reflect the changes in State law, section 41–6–163.6, Utah Code Annotated, for implementing the I/M program in Salt Lake County. After EPA approval, this State provision will become part of the Federally-enforceable SIP. The revised maintenance plan reflects the changes in the Salt Lake County I/M program in that mobile source CO emissions were calculated for the Salt Lake City area for the years 2005, 2008, 2011, 2014, 2017, and 2019, assuming every-other-year testing for vehicles less than six years old. Even with this relaxation of the I/M requirements, the emission projections indicate that the Salt Lake City area will maintain the CO NAAQS from 2005 through 2019.

We note a discrepancy between the Salt Lake County I/M program and Appendix 1.1, "Salt Lake City-County Health Department Regulation #22A Governing the Motor Vehicle Emissions Inspection Maintenance Program for the Control of Air Contaminant Emissions from Motor Vehicles, March 5, 1998." In Regulation #22A, section 2.0 "Purpose" and section 6.0 "General Provisions" indicate that the Director and the Board of County Commissioners can require either an annual or biennial program. The maintenance demonstration is based on an annual program for vehicles six years or older and a biennial program for vehicles less than six years old. Any decision by the Director and the Board of County Commissioners to expand the biennial program to other vehicles will only be federally effective upon EPA approval as a SIP revision.

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

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

Section 110(1) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. The revised Salt Lake City CO maintenance plan and Salt Lake County I/M program will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VIII. Final Action

In this action, EPA is approving the revised Salt Lake City CO maintenance plan, the revisions to Utah's Rule R307–110–12 (which incorporates the revised CO maintenance plan into the Utah Rules,) the revised transportation conformity CO motor vehicle emission budget for the years 2005 and 2019, the revised Salt Lake County vehicle inspection and maintenance program, and the revisions to Utah's Rule R307–110–33 (which incorporates the revised Salt Lake County vehicle inspection and maintenance program into the Utah Rules,) all as submitted by the Governor on October 19, 2004.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective September 30, 2005 without further notice unless the Agency receives adverse comments by August 31, 2005. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IX. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 8, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

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

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(60) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(60) Revisions to the Utah State Implementation Plan, Section IX, Part C.7, "Carbon Monoxide Maintenance Provisions for Salt Lake City," as submitted by the Governor on October 19, 2004; revisions to UACR R307–110–12, "Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide," as submitted by the Governor on October 19, 2004; revisions to the Utah State Implementation Plan, Section X, "Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as submitted by the Governor on October 19, 2004; and revisions to UACR R307–110–33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as submitted by the Governor on October 19, 2004.

(i) Incorporation by reference.

(A) UACR R307–110–12, as adopted by the Utah Air Quality Board on October 6, 2004, effective December 2, 2004. This incorporation by reference of UACR R307–110–12 only extends to the following Utah SIP provisions and excludes any other provisions that UACR R307–110–12 incorporates by reference: Section IX, Part C.7, "Carbon Monoxide Maintenance Provisions for Salt Lake City," adopted by Utah Air Quality Board on October 6, 2004, effective December 2, 2004.

(B) UACR R307–110–33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," as adopted by the Utah Air Quality Board on October 6, 2004, effective October 7, 2004.

[FR Doc. 05–15150 Filed 7–29–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7947–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Rhinehart Tire Fire Dump Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Rhinehart Tire Fire Dump Superfund Site (Site), located near Winchester (Frederick County), Virginia, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, *Palestini.andy@epa.gov*, (215) 814–3233.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and, in Virginia, at the Handley Library, 100 West Piccadilly Street, Winchester, VA 22601, (540) 662–9041 ext. 23. Hours of operation are: Monday through Wednesday, 10 a.m. to 8 p.m. and Thursday through Saturday, 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, *Palestini.andy@epa.gov*, (215) 814–3233 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final notice of deletion of the

Rhinehart Tire Fire Dump Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005, on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice or the notice of intent to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Rhinehart Tire Fire Dump Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA § 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the Commonwealth of Virginia on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) The Commonwealth of Virginia has concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site History and Characteristics

Land and Resource Use

The Rhinehart Tire Fire Dump Site is approximately 10 acres in size and is located on a much larger residential parcel of land located in a sparsely populated rural area in western Frederick County, Virginia approximately six miles west of Winchester. The upland portion of the Site, where most of the Superfund response work took place, is approximately 5 acres in size. Title of the property which constitutes the Site, as well as the remaining portion of the Rhinehart Farm, is part of the Rhinehart estate. The Site includes the head waters of Massey Run which flows into Hogue Creek and then into the Potomac River.

History of Contamination/Response Actions

Between 1972 and 1983, the operator (also the site owner) used the ravine behind his home as a tire storage area. During the course of his business, it is estimated that as many as twenty-five million tires were handled by the operator. Most of the tires were sold for re-tread and others for dock linings, etc. The remainder were stored in the ravine.

On October 31, 1983, a fire broke out in the tire storage area, and engulfed an estimated 5 to 7 million tires that were being stored at the site at that time. Due to the magnitude of the fire, state officials requested assistance from EPA. The fire was brought under control within a few days, but continued to smolder for six months. An investigation revealed that the fire was caused by an arsonist.

The burning of the tires caused a release of contaminants and the melting and pyrolysis of the tires produced a hot oily substance. Chemically, the oily tar contained benzene, ethylbenzene, toluene, anthracene, naphthalene, pyrene, cadmium, chromium, nickel,

and zinc. The fire posed an imminent and substantial threat to human health and the environment through the release of airborne contaminants, the release of hazardous substances to Massey Run, Hogue Creek, and the Potomac River, as well as the fire threat to the surrounding forest.

Initially, EPA constructed a catch basin to trap the free-flowing oily substance as it began to seep out of the edge of the tire pile and into Massey Run. However, because of a higher than estimated flow rate, a second pond (later named Dutchman's Pond) was constructed down-slope from the burn area. Dutchman's Pond was constructed as a lined, 50,000 gallon pond in mid-November 1983. Approximately 800,000 gallons of oil product were eventually collected, removed from the site, and recycled as fuel oil.

To address the long-term cleanup, the site was placed on the National Priorities List (NPL) on June 10, 1986. EPA split the remedial activities into three operable units. The purpose of Operable Unit 1 (OU–1) was to control the off-site migration of contaminants and to re-stabilize the area. The purpose of OU–2 was to decommission Dutchman's Pond. The purpose of OU–3 was to address site-wide contamination.

Aquatic toxicity was identified in the OU–1 Remedial Investigation as the principal environmental concern at the site. Contaminated runoff from the site was found to be the main contributor to the chronic and acute toxicity observed in surface water samples taken from locations downstream of the site. Zinc, detected at levels exceeding the ambient water quality, was thought to be the primary contributor of risk to aquatic life. EPA selected an interim remedy in the OU–1 Record of Decision (ROD) dated June 30, 1988, with the Remedial Action Objective (RAO) of reducing or eliminating the continued migration of contaminants off-site. The slopes were stabilized by covering them with shotcrete (a concrete-like substance) and storm sewers were constructed to transport the collected surface water to Rhinehart's Pond. The dam at the pond was raised ten feet to enable gravity settling of the collected water. A water treatment plant was installed when it was determined that gravity settling alone would not meet the effluent standards set by the Virginia Water Control Board.

The RAO for OU–2 was to eliminate the immediate threat of release of contaminants from Dutchman's Pond to Massey Run. Dutchman's Pond posed an imminent threat to the aquatic life in Massey Run because only six inches of freeboard remained. Samples taken from the pond verified surface water and sediment contamination; Again, zinc was the primary contributor of aquatic risk. The remedy selected for OU–2, in the September 29, 1992 ROD, was clean closure of Dutchman's Pond, including: transporting the surface water to Rhinehart's Pond for eventual treatment; solidification of the sediment; and, off-site disposal of the solidified sediment, pond liner, and the soil surrounding the pond which exceeded 50 mg/kg zinc.

Because the previous operable units focused on the immediate threats posed by the contamination at the site, EPA evaluated long-term threats as part of OU–3. The OU–3 Remedial Investigation consisted of site-wide sampling to characterize and identify potential ground water, soil, surface water, and sediment contamination from the fire. Residential well and spring samples analyses showed concentrations below Federal Maximum Contaminant Levels (MCLs). Sediment analyses showed numerous inorganics in Rhinehart's Pond (such as arsenic, cadmium, copper, lead, mercury, nickel, selenium, and zinc) and Massey Run and Hogue Creek (such as copper, cyanide, iron, and zinc). Although the results of the OU–3 human health risk assessment indicated a potential risk associated with exposure to inorganics in the surface soil, subsurface soil, and ground water, a background study indicated that the levels detected were statistically comparable to background levels. As such, these media did not require remediation and were not considered when remedial action objectives were developed. The only RAO developed for human health was the potential risk associated with ingestion of fish from Hogue Creek, due to potential noncancer hazards above recommended levels.

An Ecological Risk Assessment was performed to determine the risk or harm to ecological resources from exposure to contaminants from the Site, including toxicity evaluation of the sediment in Rhinehart's Pond and Massey Run. Of all the metals calculated to pose a potential risk, zinc was determined to pose the highest risk to the ecological receptors at the Site, and was determined to be the driver of the ecological risk found at the Site. In summary, the potential adverse impacts on ecological receptors in Rhinehart's Pond and Massey Run is associated with zinc in the sediment and cyanide and iron in the surface water.

The OU–3 ROD, issued on September 29, 2000, provided for the third and final phase of the long-term cleanup. The OU–3 RAOs were to: Prevent ecological exposure to levels of zinc exceeding 1,600 mg/kg; prevent migration and leaching of contaminants in the sediment that may contaminate the surface water in Rhinehart's Pond, Massey Run, and Hogue Creek; and, decommission the previously constructed facilities. This remedy consisted of: treating the remaining surface water in Rhinehart's Pond; solidification of the sediments in Rhinehart's Pond that exceeded 1,600 mg/kg zinc; removal of the sediments in Massey Run which exceeded 1,600 mg/kg zinc; offsite disposal of all sediments; and, decommissioning the previously constructed facilities, including covering the shotcrete with soil, removing the surface water collection system, the treatment plant, and the dam at Rhinehart's Pond, as well as re-grading and re-vegetating the site and restoring the stream where Rhinehart's Pond was located.

Cleanup Standards

The remedial action cleanup activities at the Rhinehart Tire Fire Dump site are consistent with the objectives of the NCP and will provide protection to human health and the environment. The RAO for OU–1 (reducing or eliminating the continued migration of contaminants off-site) was met when EPA stabilized the site by placing shotcrete on the fire damaged slopes and diverted the surface water through construction of a collection sewer. Effluent limits set by the Virginia Water Control Board were met prior to discharge of the water to Massey Run, as evidenced by the effluent sampling forms, after construction of the water treatment plant.

The RAO set for OU–2 was met through the clean closure of Dutchman's Pond. All of the surface water was diverted to Rhinehart's Pond for treatment through the water treatment system and the sediment was solidified prior to offsite disposal. During excavation of the soil surrounding the pond, EPA performed confirmatory sampling to determine whether the cleanup standard of 50 mg/kg of zinc was met. However, the soil removal had to be stopped when it was feared that any further excavation could undermine the dam at Rhinehart's Pond. EPA issued an Explanation of Significant Differences, with the concurrence of the Virginia Department of Environmental Quality, to formalize this decision to stop the excavation of soil.

The OU–3 RAOs were to: Prevent ecological exposure to levels of zinc exceeding 1,600 mg/kg; prevent migration and leaching of contaminants in the sediment that may contaminate

the surface water in Rhinehart's Pond, Massey Run, and Hogue Creek; and, decommission the previously constructed facilities. These RAOs were met by treating the surface water in Rhinehart's Pond; removing, solidifying, and disposing of the sediment in Rhinehart's Pond which exceeded 1,600 mg/kg of zinc; removing and disposing of the sediment in Massey Run which exceeded 1,600 mg/kg of zinc; and decommissioning the facilities previously constructed. Monitoring was performed on the treatment plant discharge to ensure the effluent standards were met. Confirmatory sampling was performed to ensure that the cleanup level was achieved in Rhinehart's Pond. Confirmatory sampling was not performed for the sediment removal in Massey Run because EPA identified all of the stream pools in which sediment had to be removed and all of the sediment was removed in each of these pools.

Operation and Maintenance

The facilities constructed under OU–1 were operated and maintained by EPA from 1992 to 2002. The Commonwealth of Virginia contributed its ten percent share of these operation and maintenance costs through a Superfund State Contract.

All of the facilities constructed under OU–1 were decommissioned as part of the OU–3 Remedial Action, leaving nothing left to operate or maintain. In addition, re-vegetation of the site (performed as part of OU–3) was designed to return the site to a natural condition. The trees, bushes, and grass seed mixtures used were selected by the U.S. Fish & Wildlife Service because they are indigenous to the area. During the June 21, 2004 inspection, the U.S. Fish & Wildlife Service verified that significant plant and tree species had taken root within the stream area and along the stream banks, with good plant diversity and healthy condition.

Five-Year Review

CERCLA requires a five-year review of all sites where the remedial action results in hazardous substances, pollutants or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. EPA has completed two Five-Year Reviews for this Site. The first was completed on September 12, 1997 (while clean-up was ongoing) and the second on November 6, 2002 (just at the end of the OU–3 Remedial Action).

Since all of the remaining contaminated media (surface water and sediment from Rhinehart's Pond and sediment from Massey Run) was removed from the Site as part of the OU–3 Remedial Action, there are no hazardous substances, pollutants or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. Thus, no additional Five-Year reviews will be conducted. Further, there are no institutional controls needed for this Site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Site docket which EPA relied on for recommendation of the deletion of the Site from the NPL are available to the public in the information repositories.

V. Deletion Action

EPA, with the concurrence of the Commonwealth of Virginia through the Department of Environmental Quality, has determined that all appropriate responses under CERCLA have been completed at the Site, and that no further response actions are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005, on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 26, 2005.

Donald S. Welsh,

Regional Administrator, U.S. EPA Region III.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Virginia ("VA") by removing the site name "Rhinehart Tire Fire Dump."

[FR Doc. 05–15151 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050510127–5190–02; I.D. 050305D]

RIN 0648–AS35

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab (Red Crab) Fishery Management Plan (FMP). This final rule modifies the existing annual review and specification process by allowing specifications to be set for up to 3 years at a time, and continues the current target total allowable catch (TAC) of 5.928 million lb (2.69 million kg) and fleet days-at-sea (DAS) of 780 fleet DAS for fishing year (FY) 2006 and FY2007. The purpose of this action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry.

DATES: This rule is effective August 31, 2005.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and Stock Assessment and Fishery Evaluation (SAFE) Report, are available from Paul J. Howard,

Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION: This final rule implements measures contained in Framework Adjustment 1 to the FMP (Framework 1) that modify the existing annual review and specifications process by allowing specifications to be set for up to 3 years at a time, and continues the current target total allowable catch (TAC) of 5.928 million lb (2.69 million kg) and 780 fleet DAS for FY2006 and FY2007. Details concerning the justification for and development of Framework 1 and the implementing regulations were provided in the preamble to the proposed rule (70 FR 29265, May 20, 2005) and are not repeated here.

Multi-Year Specifications Process

The Council identified 3 years as an appropriate length of time to reduce the administrative burden associated with an annual review cycle without increasing the risk of over-harvesting the red crab resource. The appropriate environmental and regulatory reviews required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act (NEPA), and other applicable laws will be completed during the year in which 3–year specifications are set. The Red Crab Plan Development Team (PDT) will complete an updated SAFE Report every 3 years, and recommend specifications for up to 3 of the following fishing years, and will continue to evaluate the red crab stock and fishery status annually. The annual evaluation will focus on the most recent fishery-dependent information including, but not limited to, DAS used and red crab landings. More comprehensive analyses will be conducted in the SAFE Report every 3 years. The Council retains the flexibility to set red crab specifications for less than 3 years based on new information and/or recommendations from the PDT.

Multi-year specifications provide the industry with greater regulatory consistency and predictability, and simplifies the process by reducing the frequency of Council decision-making and NMFS rulemaking. However, the maximum 3–year specification process does not prevent the Council from changing specifications during the interim years, if information obtained during the annual review indicates that the red crab specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

This action is not expected to have any substantial direct social or economic impact on the red crab fishery. All potential impacts on the resources associated with this fishery will derive from the additional level of risk to these resources that could occur if the specifications are set at too high a level. If specifications are set too high, then there could be a greater risk of overfishing. However, the annual review required under this action provides the opportunity for the Council to adjust the out-year specifications, if new information indicates that the out-year specifications were set at an inappropriate level.

FY2006 and FY2007 Specifications

For FY2006 and FY2007, this action continues the current (FY2005) TAC of 5.928 million lb (2.69 million kg) and 780 fleet DAS. Because the small fishing fleet has neither exceeded an annual TAC nor used all of its allocated DAS since implementation of the FMP, landings are not expected to exceed established amounts.

The measures implemented under the FMP are expected to continue to protect the resource from overexploitation and maintain a sustainable fishery. Because this action maintains the status quo, it is expected to have the same effect as previously analyzed actions.

Because the FMP is managed under a target TAC, rather than a hard TAC requiring the closing of the fishery when the TAC is reached, there is no direct mechanism to prevent the fishery from exceeding the TAC; however, the DAS management program implemented under the FMP was designed to constrain red crab fishing effort to a level consistent with, or less than that which would allow the resource to produce maximum sustainable yield, while still providing sufficient opportunity to harvest the target TAC. Therefore, as DAS are adjusted, the level of potential red crab harvest is expected to adjust accordingly, assuming a constant harvest rate per day-at-sea.

In terms of the biological impacts on other non-target species and the ecosystem, based on analysis in the FMP/EIS, it is unlikely that any of the alternatives in the EA/RIR/IRFA would have an impact. There is very little known about the interactions of the deep-sea red crab with other species and their associated communities. The FMP explains that initial reports from industry members indicate that there is very little, if any, bycatch of other species in the directed red crab fishery. According to the recent SAFE Report (October 2004), there are no records of observed red crab trips in the observer database, and the trips that are recorded in the Vessel Trip Report (VTR) database have very little bycatch information. The FMP did identify that the bycatch of red crab in other fisheries may be a more substantial issue. However, the bycatch of red crab in other fisheries is not pertinent to this action.

Comments and Responses

During the comment period for the proposed rule (70 FR 29265, May 20, 2005), which ended June 20, 2005, two e-mails with comments were received from the same commenter.

Comment: The commenter is opposed to a multi-year time frame and stated that the stock conditions change annually, and that a multi-year time frame lends itself to less accurate setting of quotas.

Response: The PDT will continue to undertake an annual evaluation of the red crab stock and fishery status. The multi-year specification process does not prevent the Council from setting specifications during the interim years, if information obtained during the annual review indicates that the red crab specifications warrant a change.

Comment: The commenter stated that the stock is overfished and that the quota should be cut by 50 percent this year, and by 10 percent each year thereafter.

Response: NMFS determined that the stock is not overfished. The commenter gave no specific rationale for the suggestion that the TAC and fleet DAS be reduced from what was proposed. The reasons presented by the Council and NMFS for implementing these specifications are discussed in the preambles to the proposed rule and this final rule, and are sufficiently analyzed within the Framework 1 document. These specifications were developed based on the best scientific data available at the time, in accordance with the requirements of the Magnuson-Stevens Act. There is no known scientific basis for reducing the target TAC and fleet DAS allocation to the levels suggested by the commenter.

Comment: The commenter suggested establishment of marine sanctuaries.

Response: While NMFS acknowledges the importance of the general issues raised by the commenter, Framework 1

did not consider or recommend marine sanctuaries in this fishery, nor are the establishment of marine sanctuaries in this fishery called for under applicable law.

Changes from the Proposed Rule (70 FR 29265, May 20, 2005)

Minor editorial changes were made from the proposed rule to the final rule to clarify the intent of, and improve the readability of, the regulatory text.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 1 is necessary for the conservation and management of the red crab fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule (70 FR 29265, May 20, 2005) included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

This rule is necessary to modify the existing annual review and specification process to allow specifications to be set for up to 3 years in advance, and establishes the fishery specifications for FY2006 and FY2007. The purpose of this rule is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry. A full description of the reasons why this action is being considered, and the objectives and legal basis for this action, are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No comments related to the economic analyses in the IRFA or the economic impacts of the rule generally were received. No changes to the proposed rule were made as a result of public comments. For a summary of the comments received, and NMFS's responses to them, see "Comments and Responses."

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

According to the Small Business Administration standards, any fish harvesting or hatchery business is a small entity if it is independently owned and operated and not dominant in its field of operations, and if it has annual receipts of not in excess of $3.5 million. There are five vessels with limited access permits in this fishery, and all of them meet the criteria for small entities; therefore, there is no disproportionate effect between large and small entities. All the alternatives and analyses contained in Framework 1 necessarily reflect on these five vessels.

Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impacts on Small Entities

The Council prepared an economic analysis that describes the economic impact that this rule will have on small entities. A summary of the analysis follows:

As stated in the preamble to the proposed rule, this action incorporates two separate, but related, decisions of the Council. First, the Council determined that it would modify the annual review and specification process (Decision 1), rather than maintaining the status quo, which would require that specifications be set annually. After the Council elected to modify the annual review and specification process, it then decided to propose the specifications for FY2006 and FY2007 (Decision 2) in order to give effect to Decision 1.

Decision 1, which dealt solely with the 3–year review and specification cycle for the alternatives considered, had two options. Option 1 would not have required an annual review of the status of the red crab resource and fishery, while Option 2 (this final action) does require such review. Neither option would have a direct economic impact on the vessels with limited access permits in the red crab fishery; therefore, there are no alternatives available that would result in different economic impacts on affected small entities.

Decision 2, which dealt solely with the specifications for FY2006 and FY2007, originally identified three alternatives. Two of these became the same alternative (i.e., the resulting target TAC and fleet DAS were equal) so that the remaining two were evaluated in the economic analysis once the Council's choice of specifications for FY2005 was made (see 70 FR 7190, February 11, 2005). This action will continue the same TAC (5.928 million lb (2.69 million kg) and fleet DAS allocation (780) as in FY2004 and FY2005. The non-preferred alternative would have continued the same target TAC, but would have allocated 5 percent fewer total fleet DAS than the DAS allocation for FY2005. This allocation would have remained the same for FY2006 and FY2007. Therefore, under the non-preferred alternative, the DAS allocation for both fishing years would have been 741, rather than the 780 DAS to be implemented under this action.

No adverse economic impacts associated with the fleet allocation of 780 DAS are expected. Since the implementation of the FMP, in no year has any vessel utilized its full DAS allocation, such that no regulatory barriers have existed to prevent vessels from increasing their landings and revenue. Accordingly, the potential remains for vessels to increase their revenues over and above those of recent years.

No significant alternatives exist that would increase expected direct economic benefits relative to the alternative implemented in this rule. The only potential way to increase expected economic benefits above those expected as a result of this rule would be to further increase the target TAC and DAS allocated to the fleet. However, all scenarios in which the target TAC and allocated fleet DAS are higher than 5.928 million lb (2.69 million kg) and 780 DAS, respectively, would compromise the objective of the FMP and the legal mandate of the Magnuson-Stevens Act to prevent overfishing. This action is not expected to alter the fishing practices of the four vessels actively participating, of the five vessels permitted, in the fishery.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit

holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the NMFS Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access permits for the red crab fishery. The guide and this final rule are available at the following web site: *http://www.nero.noaa.gov/nero/*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. Section 648.260 is amended by revising the section heading and paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.260 Specifications.

(a) *Process for setting specifications.* The Council's Red Crab Plan Development Team (PDT) shall prepare a Stock Evaluation and Assessment (SAFE) Report at least every 3 years. Based on the SAFE Report, the PDT shall develop and present to the Council recommended specifications as defined in this paragraph (a) for up to 3 fishing years. The PDT shall meet at least once annually during the intervening years between SAFE Reports to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming years need to be modified. The annual review shall be limited in scope and shall concentrate on the most recent fishery-dependent information including, but not limited to, days-at-sea (DAS) used and red crab landings. In the event that the PDT recommends an adjustment to the specifications, the PDT shall prepare a supplemental specifications package for a specific time duration up to 3 years. Specifications include the specification of OY, the setting of any target TACs, allocation of DAS, and/or adjustments to trip/possession limits.

* * * * *

(b) *Development of specifications.* In developing the management measures and specifications, the PDT shall review at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(1) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

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[FR Doc. 05–15142 Filed 7–29–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D.072205E]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #2—Adjustment of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended from 4 to 7 days, with a 125–Chinook possession and landing limit for the 7–day open period. The area closed at midnight on May 26, 2005. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Adjustment effective 0001 hours local time (l.t.), May 20, 2005, until 2359 hours l.t., May 26, 2005; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**. Comments will be accepted through August 16, 2005.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA2.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include I.D. 072205E in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) modified the season for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR by inseason action. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended from 4 to 7 days, with a 125–Chinook possession and landing limit for the 7–day open period. On May 20, 2005, the RA determined that available catch and effort data indicated that the 29,000 Chinook quota for the May-June fishery would likely be attained by the end of the extended period. The area closed at midnight on May 26, 2005. The fishery was to remain closed until further notice, but was scheduled to be reevaluated on May 31. If there was sufficient quota remaining, any further openers were to be announced.

All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended

effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). Modification of quotas and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations are authorized by regulations at 50 CFR 660.409(b)(1)(ii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,000–Chinook quota; open May 1–3 with a 75–Chinook per vessel landing and possession limit for the 3–day open period; open May 6–9 with a 100–Chinook per vessel landing and possession limit for the 4–day open period; and beginning May 13, open Friday through Monday with a 125–Chinook possession and landing limit for each of the subsequent 4–day open periods.

On May 20, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch and effort data indicated that it was likely that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would reach its 29,000 Chinook quota for the May-June fishery after the fourth open period starting on May 20.The data also indicated the 4–day open period (from Friday through Monday) could be modified so the area could remain open for 7 days because forecasted weather conditions would limit opportunity during the weekend period. As a result, on May 20 the states recommended, and the RA concurred, that the fourth open period for the May-June fishery scheduled to open May 20, 2005, for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, be extended to 7 days open, with a 125–Chinook possession and landing limit for the 7–day open period, closing at midnight on May 26, 2005. The fishery would then remain closed until further notice, but was scheduled to be reevaluated on May 31. If there was sufficient quota remaining, any further openers were to be announced. All other restrictions that apply to this fishery remained in effect as announced in the 2005 annual management measures.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the previously described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota, or the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. In addition, the action also relieved a restriction by modifying a subarea regulation to be open 7 days per week instead of 4 days per week, thus providing additional harvest opportunity. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 0722205F]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #3—Adjustment of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to reopen on June 3, 2005, and close at midnight on June 6, 2005, with a 60–Chinook possession and landing limit for the 4–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Adjustment effective 0001 hours local time (l.t.), June 3, 2005, until 2359 hours l.t., June 6, 2005; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**. Comments will be accepted through August 16, 2005.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point

Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA3.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include I.D. 072205F in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) modified the season for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR by inseason action to reopen on June 3, 2005, and close at midnight on June 6, 2005, with a 60–Chinook possession and landing limit for the 4–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. On May 31, 2005, the RA determined that available catch and effort data indicated that enough Chinook remained within the quota to allow 4 additional days of fishing. The fishery was then to remain closed until further notice, but would be reevaluated on June 8, 2005. If there was sufficient quota remaining, any further openers would be announced.

All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Recision of automatic season closures are authorized by regulations at 50 CFR 660.409(a)(2). Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). Modification of quotas and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations are authorized by regulations at 50 CFR 660.409(b)(1)(ii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,000–Chinook quota; open May 1–3 with a 75–Chinook per vessel landing and possession limit for the 3–day open period; open May 6–9 with a 100–Chinook per vessel landing and possession limit for the 4–day open period; and beginning May 13, open Friday through Monday with a 125–Chinook possession and landing limit for each of the subsequent 4–day open periods.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified by Inseason Action #2. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended to be open 7 days, with a 125–Chinook possession and landing limit for the 7–day open period, and was then closed at midnight on May 26, 2005. On May 20, 2005, the RA determined that available catch and effort data indicated that the 29,000 Chinook quota for the May-June fishery would likely be attained by the end of the extended period. The fishery was to remain closed until further notice, but was scheduled to be reevaluated on May 31. If there was sufficient quota remaining, any further openers were to be announced.

On May 31, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch and effort data for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR indicated that enough fish remained within the Chinook quota to allow 4 additional days of fishing.As a result, on May 31 the states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR reopen on June 3, 2005, and close at midnight on June 6, 2005, with a 60–Chinook possession and landing limit for the 4–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. The fishery was then to remain closed until further notice, but would be reevaluated on June 8, 2005. If there was sufficient quota remaining, any further openers would be announced. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the previously described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota, or the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–15095 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 072205G]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #4—Adjustment of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to reopen on June 26, 2005, and close at midnight on June 30, 2005, with a 30–Chinook possession and landing limit for the 5–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. The fishery was then to remain closed until further notice, or the next scheduled season starting July 7, 2005. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Adjustment effective 0001 hours local time (l.t.), June 26, 2005, until 2359 hours l.t., June 30, 2005; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through August 16, 2005.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA4.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include I.D. 072205G in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) modified the season for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, by inseason action to reopen on June 26, 2005, and close at midnight on June 30, 2005, with a 30–Chinook possession and landing limit for the 5–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. On June 8, 2005, the RA determined that available catch and effort data indicated that enough Chinook remained in the quota to allow five additional days of fishing. The fishery was then to remain closed until further notice, or the next scheduled season starting July 7, 2005.

All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Recision of automatic season closures are authorized by regulations at 50 CFR 660.409(a)(2). Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). Modification of quotas and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations are authorized by regulations at 50 CFR 660.409(b)(1)(ii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,000–Chinook quota; open May 1–3 with a 75–Chinook per vessel landing and possession limit for the 3–day open period; open May 6–9 with a 100–Chinook per vessel landing and possession limit for the 4–day open period; and beginning May 13, open Friday through Monday with a 125–Chinook possession and landing limit for each of the subsequent 4–day open periods. If insufficient quota remained to prosecute openings prior to the June 24–27 open period, the remaining quota was to be provided for a June 26–30 open period with a per vessel landing and possession limit to be determined inseason.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified by Inseason Action #2. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended to be open 7 days, with a 125–Chinook possession and landing limit for the 7–day open period, and was then closed at midnight on May 26, 2005. On May 20, 2005, the RA determined that available catch and effort data indicated that the 29,000 Chinook quota for the May-June fishery would likely be attained by the end of the extended period. The fishery was to remain closed until further notice, but was scheduled to be re-evaluated on May 31. If there was sufficient quota remaining, any further openers were to be announced.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was determined on May 31, 2005 to have sufficient quota remaining, for a another opener and was then modified by Inseason Action #3. The fifth open period for the May-June fishery was reopened from June 3, 2005, through midnight on June 6, 2005, with a 60–Chinook possession and landing limit for the 4–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. The fishery was then to remain closed until further notice, but would then be reevaluated on June 8, 2005. If there was sufficient quota remaining, any further openers were to be announced.

On June 8, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch and effort data for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR indicated that enough fish remained within the Chinook quota to allow 5 additional days of fishing.As a result, on June 8 the

states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon OR, reopen on June 26, 2005, and close at midnight on June 30, 2005, with a 30–Chinook possession and landing limit for the 5–day open period. Vessels were required to land their fish within 24 hours of any closure of this fishery. The fishery was then to remain closed until further notice, or the next scheduled season starting July 7, 2005. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the previously described action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota, or the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–15096 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 146
Monday, August 1, 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 LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–016]

RIN 1218–AC11

Occupational Exposure to Ionizing Radiation

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for information; extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the deadline for commenting on the Request for Information (RFI) on Ionizing Radiation for 120 days, from August 1 to November 28, 2005. OSHA is extending the comment deadline to give stakeholders adequate time to comment on the Biological Effects of Ionizing Radiation (BEIR) VII report on health risks for exposure to low levels of ionizing radiation, which was not issued until June 29, 2005.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by November 28, 2005.

Facsimile and electronic transmission: Your comments must be sent by November 28, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. H–016, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions below for submitting comments.

Agency Web site: http://ecomments.osha.gov. Follow the instructions on the OSHA Web page for submitting comments.

Fax: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery and courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket H–016, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours of operations are 8:15 a.m. to 4:45 p.m., e.s.t. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at the address above for information about security procedures concerning the delivery of materials by express delivery, hand delivery and courier service.

Instructions: All submissions received must include the Agency name and docket number (H–016). All comments received will be posted without change on OSHA's Web page at *http://www.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

All comments and submissions are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions as well as electronic copies of this **Federal Register** notice, news releases and other relevant documents, are also available on OSHA's Web page.

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Kevin Ropp, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

General and technical information: Dorothy Dougherty, Acting Director, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950.

SUPPLEMENTARY INFORMATION: OSHA published a notice on May 3, 2005, requesting data, information and comments on issues related to the increasing use of ionizing radiation in the workplace and potential worker exposure to it (70 FR 22828). Specifically, OSHA requested data and information about the sources and uses of ionizing radiation in workplace today, current employee exposure levels, and adverse health effects associated with ionizing radiation exposure. OSHA also requested data and information about practices and programs employers are using to control employee exposure, such as exposure assessment and monitoring methods, control methods, employee training, and medical surveillance. OSHA set a deadline of August 1, 2005, to submit comments.

On June 29, 2005, the National Academies released its report titled "BEIR VII: Health Risks from Exposure to Low Levels of Ionizing Radiation." The BEIR VII report presents the most up-to-date and comprehensive risk estimates for cancer and other health effects from exposure low-level ionizing radiation. It is among the first reports of its kind to include a detailed estimate for cancer incidence in addition to cancer mortality. The BEIR VII committee reviewed epidemiological studies concerning individuals who had been exposed to ionizing radiation because of medical, occupational, or environmental reasons, including studies of the atomic-bomb survivor cohort in Hiroshima and Nagasaki, Japan. A major task of the committee was to develop an approach for estimating cancer risks from exposure to low levels of low energy transfer ionizing radiation.

The work of past BEIR Committees has been significant in the radiation standard-setting process. The Agency believes it is crucial that stakeholders, in preparing their comments, have sufficient time to fully review the information and issues on the health effects of ionizing radiation presented in the BEIR VII report. Accordingly, to facilitate this OSHA is extending the deadline for submitting comments for an additional 120 days until November 28, 2005.

Authority and Signature

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of

1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary of Labor's Order 5–2002 (67 FR 65008).

Issued at Washington, DC, this 26 day of July 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–15119 Filed 7–29–05; 8:45 am]

BILLING CODE 4910–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08–OAR–2004–CO–0005; FRL–7936–9]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Colorado; Long-Term Strategy of State Implementation Plan for Class I Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Colorado with a letter dated April 12, 2004. This revision replaces an August 19, 1998, submittal from the Governor and updates the Long-Term Strategy of the Visibility SIP to establish strategies, activities, and plans that constitute reasonable progress toward the National visibility goal. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a controversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before August 31, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R08–OAR–2004–CO–0005, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rmepub/index.jsp*. Regional Materials in EDOCKET (RME), EPA's electronic docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *platt.amy@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR; 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region 8, 999 18th St., Suite 300, Denver, Colorado 80202, 303–312–6449, *platt.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 30, 2005.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 05–15053 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–UT–0002; FRL–7939–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah. On October 19, 2004, the Governor of Utah submitted revisions to Utah's Rule R307–110–12, "Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide," which incorporates a revised maintenance plan for the Salt Lake City carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan contains revised transportation conformity budgets for the years 2005 and 2019. In addition, the Governor submitted revisions to Utah's Rule R307–110–33, "Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County," which incorporates a revised vehicle inspection and maintenance program for Salt Lake County. EPA is proposing approval of the Salt Lake City CO revised maintenance plan, the revised transportation conformity budgets, the revised vehicle inspection and maintenance program for Salt Lake County, and the revisions to rules R307–110–12 and R307–110–33. This action is being taken under section 110 of the Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at

this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Written comments must be received on or before August 31, 2005.

ADDRESSES: Submit your comments, identified by RME Docket Number R08–OAR–2005–UT–0002, by one of the following methods:

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

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

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

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of the **Federal Register**.

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

Dated: July 8, 2005.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 05–15149 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7947–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Rhinehart Tire Fire Dump Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Rhinehart Tire Fire Dump Superfund Site (Site) located near Winchester, Virginia from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VDEQ), have determined that all appropriate response actions under CERCLA have been completed at the Site. However, this deletion does not preclude future actions under CERCLA.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of the Rhinehart Tire Fire Dump Site without prior notice of intent to delete because EPA views this as a noncontroversial deletion and anticipates no adverse comment. EPA has explained its reasons for this deletion in the direct final notice of deletion. If EPA receives no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, EPA will take no further action. If EPA receives adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. EPA will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the Direct Final Notice of Deletion which is located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this Site must be received by August 31, 2005.

ADDRESSES: Written comments should be addressed to: Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, *Palestini.andy@epa.gov*, (215) 814–3233.

FOR FURTHER INFORMATION CONTACT: Andrew Palestini, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103–2029, *Palestini.andy@epa.gov*, (215) 814–3233 or 1–800–553–2509.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the "Rules and Regulations" section of this **Federal Register**.

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103–2029, (215) 814–5254, Monday through Friday, 8 a.m. to 5 p.m.; and in Virginia at the Handley Library, 100 West Piccadilly Street, Winchester, VA 22601, (540) 662–9041 ext. 23. Hours of operation are: Monday through Wednesday, 10 a.m. to 8 p.m. and Thursday through Saturday, 10 a.m. to 5 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 26, 2005.

Donald S. Welsh,

Regional Administrator, U.S. EPA Region III.

[FR Doc. 05–15152 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 246 and 252

[DFARS Case 2004–D008]

Defense Federal Acquisition Regulation Supplement; Notification Requirements for Critical Safety Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding notification of potential safety issues under DoD contracts. The proposed rule contains a contract clause requiring contractors to promptly notify the Government of any nonconformance or deficiency that could impact item safety.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 30, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D008, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2004–D008 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, (703) 602–0311.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed DFARS rule contains a new clause for use in contracts for (1) replenishment parts identified as critical safety items; (2) systems and subsystems, assemblies, and subassemblies integral to a system; and (3) repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and subassemblies integral to a system. The clause requires the contractor to notify the administrative contracting officer and the procuring contracting officer within 72 hours after discovering or acquiring credible information concerning an item nonconformance or deficiency that may have a safety impact. This proposed rule is a result of Section 8143 of the Fiscal Year 2004 DoD Appropriations Act (Pub. L. 108–87), which required examination of appropriate standards and procedures to ensure timely notification to the Government and contractors regarding safety issues, including defective parts.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only in situations where nonconformances or deficiencies could impact item safety. The occurrence of such situations is expected to be limited. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D008.

C. Paperwork Reduction Act

This proposed rule contains a new information collection requirement. DoD has submitted the following proposal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Notification Requirements for Critical Safety Items.

Type of Request: New requirement.

Number of Respondents: 100.

Responses Per Respondent: 1.

Annual Responses: 100.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 100.

Needs and Uses: DoD needs this information to ensure that the Government receives timely notification of item nonconformances or deficiencies that could have a safety impact. DoD contracting and requirements personnel will use this information to notify the appropriate parties of the potential safety issue, assess the impact, mitigate the risk, and take corrective action.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations Council, Attn: Ms. Michele Peterson, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Aquisition Regulayions System.

Therefore, DoD proposes to amend 48 CFR parts 246 and 252 as follows:

1. The authority citation for 48 CFR parts 246 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 246—QUALITY ASSURANCE

2. Section 246.101 is amended by adding a definition of "Replenishment part" to read as follows:

246.101 Definitions.

* * * * *

Replenishment part, as used in this subpart, means a repairable or consumable part, purchased after provisioning of that part, for—

(1) Replacement;

(2) Replenishment of stock; or

(3) Use in the maintenance, overhaul, or repair of equipment.

3. Section 246.371 is added to read as follows:

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246–7XXX, Notification of Potential Safety Issues, in solicitations and contracts for the acquisition of—

(1) Replenishment parts identified as critical safety items;

(2) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(3) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, and subassemblies integral to a system.

(b) Follow the procedures at PGI 246.371 for the handling of notifications received under the clause at 252.246–7XXX.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.246–7XXX is added to read as follows:

252.246–7XXX Notification of Potential Safety Issues.

As prescribed in 246.371(a), use the following clause:

Notification of Potential Safety Issues (XXX 2005)

(a) *Definitions.* As used in this clause—

Critical safety item means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could cause a catastrophic or critical failure resulting in the loss of or serious damage to the system or an unacceptable risk of personal injury or loss of life.

Safety impact means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding $200,000.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

(1) All technical nonconformances for replenishment parts identified as critical safety items acquired by the Government under this contract; and

(2) All nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) within 72 hours after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause.

(1) The notification shall include—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(2) The Contractor may provide the notification in writing or telephonically. However, the Contractor shall provide a confirming written notification, that includes the information required by paragraph (c)(1) of this clause, to the ACO and the PCO within 72 hours after a telephonic notification. As further information becomes available, the Contractor shall also provide that information to the ACO and the PCO.

(d) The Contractor is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor. However—

(1) The subcontractor shall provide the notification required by paragraph (c) of this clause to—

(i) The Contractor or the appropriate higher-tier subcontractor; and

(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract; and

(2) The Contractor shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f) The Contractor shall include this clause, including this paragraph (f), in all subcontracts issued under this contract.

(End of clause)

[FR Doc. 05–15156 Filed 7–29–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT84

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and draft environmental assessment, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*) under the Endangered Species Act of 1973 (Act), as amended. The draft economic analysis finds that, over the next 20 years, costs associated with Arkansas River shiner conservation activities are forecast to range from $9 to $11 million per year. In constant dollars, the draft economic analysis estimates there will be an economic impact of $198 million over the next 20 years. The greatest economic impacts are expected to occur to concentrated animal feeding operations, oil and gas production, and water management activities, in that order. Comments previously submitted on the October 6, 2004, proposed rule (69 FR 59859) during both the initial and extended comment periods (April 28, 2005, 70 FR 21987), need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold three public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

DATES: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before August 31, 2005 of this document, or at the public hearings.

We will hold public informational sessions from 4 p.m. to 5:15 p.m., followed by a public hearing from 7 p.m. to 9 p.m., on the following dates:

1. August 15, 2005: Oklahoma City, Oklahoma;

2. August 17, 2005: Amarillo, Texas;

3. August 18, 2005: Liberal, Kansas.

ADDRESSES: Meetings: The public informational sessions and hearings will be held at the following locations:

1. Oklahoma City, Oklahoma: Conservation Education Center Auditorium, Oklahoma City Zoological Park, 2101 NE 50th Street, Oklahoma City, Oklahoma, 73111;

2. Amarillo, Texas: Auditorium, Texas A&M Agricultural Experiment Station, 6500 Amarillo Boulevard West, Amarillo, Texas, 79106; and

3. Liberal, Kansas: Meeting Rooms, Seward County Activities Center, 810 Stadium Road, Liberal, Kansas, 67901.

Disabled persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Jerry Brabander, Field Supervisor, Oklahoma Ecological Services Field Office, at the phone number and address below as soon as possible. In order to allow sufficient time to process requests, please call no later than 3 days before the hearing. Information regarding this proposal is available in alternative formats upon request.

If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to the Oklahoma Ecological Services Office, U.S. Fish and Wildlife Service, 222 South Houston, Tulsa, Oklahoma 74127–8909.

2. Written comments may be sent by facsimile to 918–581–7467.

3. You may send your comments by electronic mail (e-mail) to *r2arshinerch@fws.gov*. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section below.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail or by visiting our Web site at *http://ifw2es.fws.gov/Oklahoma/shiner.htm*. You may review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry Brabander, Field Supervisor, Oklahoma Office (telephone 918–581–7458; facsimile 918–581–7467).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule, the draft economic analysis, and the draft environmental assessment. On the basis of public comment, during the development of our final determination, we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of the Arkansas River shiner, the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species, and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to listing or critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the proposed listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing; and

(11) Any information as to possible costs associated with instream flow requirements for the shiner downstream of Sanford Dam.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Oklahoma Ecological Services Field Office at (918) 581–7458.

Background

On October 6, 2004 (69 FR 59859), we proposed to designate as critical habitat a total of approximately 2,002 kilometers (1,244 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank. This distance includes areas that we are proposing to exclude that are discussed below. The areas that we have determined to be essential to the conservation of the Arkansas River shiner include portions of the Canadian River (often referred to as the South Canadian River) in New Mexico, Texas, and Oklahoma, the Beaver/North Canadian River of Oklahoma, the Cimarron River in Kansas and Oklahoma, and the Arkansas River in Arkansas, Kansas, and Oklahoma.

In developing this proposal, we evaluated those lands determined to be essential to the conservation of the

Arkansas River shiner to ascertain if any specific areas would be appropriate for exclusion from the final critical habitat designation pursuant to section 4(b)(2) of the Act. On the basis of our preliminary evaluation, we believe that the benefits of excluding the Beaver/North Canadian River of Oklahoma and the Arkansas River in Arkansas, Kansas, and Oklahoma from the final critical habitat for the Arkansas River Shiner outweigh the benefits of their inclusion.

On September 30, 2003, in a complaint brought by the New Mexico Cattle Growers Association and 16 other plaintiffs, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. The proposed rule was signed on September 30, 2004, and published in the **Federal Register** on October 6, 2004 (69 FR 59859). Additional background information is available in the October 6, 2004, proposed rule.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We are announcing the availability of a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the Arkansas River shiner. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed Arkansas River shiner critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $9 to $11 million dollars on an annualized basis. The low end of this range assumes zero impact to private agricultural activities and lower-bound estimates for all other activities; the high-end of this range assumes upper-bound estimates for private agriculture and all other activities. The total impact in constant dollars is $198 million over the next 20 years. The total impacts in constant dollars are the following for each of the economic sectors impacted (from Exhibit ES–4a in executive summary of the draft economic analysis): $7.3 to 20.4 million for administrative costs; $31.8 million for water operations; $28.6 to 57 million for oil and gas; $68.7 million for CAFOs; $3.6 million for Federal farm assistance; $5.9 million for grazing; $0.9 million for agricultural crops; $0.1 to $0.5 million for transportation; and $9.3 million for recreation.

As noted in our proposed rule, in developing critical habitat designations, we have also recognized under section 4(b)(2) partnerships and conservation programs or efforts that provide a conservation benefit to the subject species. In the case of Arkansas River shiner, it is our intent to recognize future conservation efforts. In this regard we have met with the Arkansas River Shiner Coalition (Coalition), whose mission is to ease the regulatory burdens of designated critical habitat for its members and to work with the Service toward the eventual recovery of the Arkansas River shiner. The Coalition represents several agricultural and ranching associations, water service providers, groundwater conservation districts, and other groups in Texas, Oklahoma, and New Mexico. The Coalition has developed an Arkansas River shiner management plan and intends to submit it to us during the current comment period. If we receive a plan from the Coalition, we will evaluate the conservation measures being provided to or planned for the Arkansas River shiner when making our final determination of critical habitat, and we may exclude areas pursuant to section 4(b)(2) of the Act if we find that the benefits of their exclusion outweigh the benefits of their inclusion.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the Arkansas River shiner will result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. As noted above, in our proposed rule we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Arkansas River shiner would affect a substantial number of small entities, we considered the number of small entities affected within particular types of

economic activities (*e.g.*, concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in five categories: Concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. The following summary of the information contained in Appendix A of the draft economic analysis provides the basis for our determination.

Concentrated Animal Feeding Operations (CAFOs)

Arkansas River shiner conservation activities have the potential to affect approximately 67 of the 4,125 small animal feeding businesses (roughly 1.6 percent) located within States that contain proposed shiner habitat and impacted CAFOs (Oklahoma, Texas, and Kansas). The watersheds with highest potential impacts to small CAFOs are the Lower Canadian (Unit 1b of proposed critical habitat) and the Lower Cimarron-Skeleton (Unit 3 of proposed critical habitat). Impacts are possible in the form of additional compliance costs related to a number of potential requirements, including increased storage capacity in wastewater retention structures and various monitoring and testing activities. These compliance costs may lead to financial stress at up to 33 facilities. Upper-bound estimates of potential impacts result from conservative assumptions (that is, assumptions that are intended to overstate rather than understate costs) regarding the number and type of project modifications required of CAFO facilities as summarized in Section 6 of the draft economic analysis.

Oil and Gas Production Activities

Project modifications to oil and gas activities resulting from Arkansas River shiner conservation activities will have minimal effects on small oil and gas and pipeline businesses in counties that contain proposed Arkansas River shiner habitat. Impacts are expected to be limited to additional costs of compliance for oil and gas projects. Assuming that each potentially impacted well and pipeline represent individual well and pipeline businesses, annual compliance costs are roughly 0.14 percent of estimated 1997 revenues for potentially impacted small oil and gas well production businesses and 0.09 percent of estimated 1997 revenues for potentially impacted small pipeline businesses in these counties. As noted in the draft economic analysis, 1997 revenue data is the most current available data from the United States Economic Census.

Agriculture

While Arkansas River shiner conservation activities have not impacted private crop production since the listing of the species in 1998, the draft economic analysis considers that farmers may make decisions that lead to reductions in crop production within proposed critical habitat. Section 7 of the draft economic analysis presents a scenario in which farmers choose to retire agricultural land from production in order to avoid section 9 take of the species ("take" means to harass, harm, pursue, or collect, or attempt to engage in any such conduct). The screening analysis estimates that up to 14 small farms in States that contain proposed Arkansas River shiner habitat could be impacted under this scenario. This represents a small percentage (less than one percent) of total farm operations in these States.

Livestock Grazing

Limitations on livestock grazing may impact ranchers in the region. As discussed in Section 7 of the draft economic analysis, Arkansas River shiner conservation activities could result in a reduction in the level of grazing effort within proposed Arkansas River shiner habitat on non-Federal lands. On non-Federal lands, however, impacts are uncertain, because maps describing the overlap of privately grazed lands and the proposed designation are not available (*i.e.*, that portion of each ranch which could be impacted by the designation). If each affected ranch is small, then approximately 20 to 43 ranches annually could experience losses in cattle grazing opportunities as a result of Arkansas River shiner conservation activities on non-Federal lands. This represents a small percentage (less than one percent for the upper-bound estimate) of beef cow operations in those States where habitat is proposed for designation.

Recreation

As detailed in Section 9 of the draft economic analysis, limitations on off road vehicle (ORV) use at the Rosita ORV area within Lake Meredith National Recreation Area in Hutchinson County, Texas, during the months of July to September may result in up to 23,299 lost visitor days annually. These lost visitor days represent 2.4 percent of the three-year average of total visitor trips to Lake Meredith National Recreation Area (2002 to 2004), and roughly 25 percent of annual ORV visitor trips to Rosita from 2000 to 2004. Recreation-related sales generated by small businesses in Hutchinson County, Texas, are estimated at $88.5 million. Thus, the total annual impact of reduced consumer expenditure ($897,00 to $1.3 million annually) is equivalent to 1.0 to 1.5 percent of small business revenues of affected industries in Hutchinson County. While small business impacts are likely to be minimal at the county level, some individual small businesses may experience greater impacts. However, data to identify which businesses will be affected or to estimate specific impacts to individual small businesses are not available.

Based on this data we have determined that this proposed designation would not affect a substantial number of small businesses involved in concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. Further, we have determined that this proposed designation would also not result in a significant effect to the annual sales of those small businesses impacted by this proposed designation. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The proposed rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a detailed discussion and analysis of this determination. Specifically, three criteria were determined to be relevant to this analysis: (1) Reductions in crude oil supply in excess of 10,000 barrels per day (bbls); (2) reductions in natural gas production in excess of 25 million Mcf per year; and (3) increases in the cost of energy production in excess of one percent. The draft economic analysis determines that the oil and gas industry is not likely to experience "a significant adverse effect" as a result of Arkansas River shiner conservation activities. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for the Arkansas River shiner including administrative costs, water management activities, oil and gas activities, concentrated animal feeding operations, agriculture, and transportation. The analysis estimates that annual costs of the rule could range from $12.7 to $16.3 million per year. Concentrated animal feeding operations (CAFOs), oil and gas production, and water management activities are expected to experience the greatest economic impacts related to shiner conservation activities, in that order of relevant impact. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to CAFOs would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the Arkansas River shiner will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Arkansas River shiner in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Arkansas River shiner does not pose significant takings implications.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 21, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15164 Filed 7–29–05; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 70, No. 146
Monday, August 1, 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

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 3575–A.

DATES: Comments on this notice must be received by September 30, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Kendra Doedderlein, Senior Loan Specialist, Rural Housing Service, STOP 0787, 1400 Independence Avenue, SW., Washington, DC 20250–0788, telephone (202) 720–1503, or by e-mail: *kendra.doedderlein@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 3575, subpart A, Community Programs Guaranteed Loans.

OMB Number: 0575–0137.

Expiration Date of Approval: February 28, 2006.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: Private lenders make the loans to public bodies and nonprofit corporations for the purposes of improving rural living standards and for other purposes that create employment opportunities in rural areas. Eligibility for this program includes community facilities located in cities, towns, or unincorporated areas with a population of up to 20,000 inhabitants.

The information collected is used by the agency to manage, plan, evaluate, an account for government resources. The reports are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 48,015.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 48,021.

Estimated Total Annual Burden on Respondents: 89,530 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS'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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 20, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–15112 Filed 7–29–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Information Services Order Form.

Agency Form Number: ITA–4096P.

OMB Number: 0625–0143.

Type of Request: Regular Submission.

Burden: 323 hours.

Number of Respondents: 975.

Avg. Hours Per Response: 5 to 10 minutes.

Needs and Uses: The U.S. & Foreign Commercial Service Export Assistance Centers offer their clients DOC programs, market research, and services to enable the client to begin exporting or to expand existing exporting efforts. The Information Services Order Form is used by US&FCS trade specialists in the Export Assistance Centers to collect information about clients in order to determine which programs or services would best help clients meet their export goals. This form is required for clients to order US&FCS programs and services. Certain programs are tailored for individual clients, *e.g.*, the International Partner Search, which identifies potential overseas agents or distributors for a particular U.S. manufacturer.

Affected Public: Companies interested in ordering export promotion products or services.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. Email: *dHynek@doc.gov.* Phone Number: (202) 482–0266. Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the

publication of this notice in the **Federal Register**.

Dated: July 26, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–4084 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1391]

Grant Of Authority For Subzone Status, Pfizer, Inc., (Pharmaceuticals/ Animal Health Products), Groton, Connecticut, Correction

The Federal Register notice (70 FR 29276, 5/20/2005) describing Foreign-Trade Zones Board Order 1391, authorizing special-purpose subzone status for Pfizer, Inc., in Groton, Connecticut (Subzone 208A) is corrected as follows:

Paragraph 4 should read "Whereas, notice inviting public comment was given in the Federal Register (69 FR 62434, 10/26/2004); and,"

Dated: July 21, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–15093 Filed 7–29–05; 8:45 am]

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Wen Enterprises; Ning Wen; Hailan Lin; Beijing Rich Linscience Electronics Company; Ruo Ling Wang

In the matters of Wen Enterprises, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Ning Wen, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Hailin Lin, 402 Wild Oak Drive, Manitowoc, WI 54220; and, Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, Respondents, and, Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, Related Party.

Wen Enterprises ("WE"), Ning Wen ("Wen"), Hailin Lin ("Lin"), Beijing Rich Linscience Electronics Company ("BRLE"), and Ruo Ling Wang ("Wang").

Order Renewing Temporary Denial Order and Adding a Related Party

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I renew for 180 days an Order temporarily denying export privileges of Wen Enterprises ("WE"), 402 Wild Oak Drive, Manitowoc, WI 54220; Ning Wen ("Wen"), 402 Wild Oak Drive, Manitowoc, WI 54220; Hailin Lin ("Lin"), 402 Wild Oak Drive, Manitowoc, WI 54220; and Beijing Rich Linscience Electronics Company ("BRLE"), No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 (hereinafter collectively referred to as the "Respondents"). Additionally, OEE has requested that I add Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086, to the Order as a related party.

On January 31, 2005, I found that evidence presented by BIS demonstrated that the Respondents conspired to do acts that violated the EAR and did in fact commit numerous violations of the EAR by participating in the unlicensed export of national security controlled items to the People's Republic of China ("PRC"). I further found that such violations had been significant, deliberate and covert, and were likely to occur again, especially given the nature of the structure and relationships of the Respondents.

OEE has presented additional evidence that Lin, Wang, and a co-owner of BRLE have pled guilty to criminal violations of the EAA, IEEPA, and EAR for some of the transactions at issue herein. OEE has further presented evidence that Wang, as co-owner of BRLE, has returned to the PRC. I now find, based on the continued circumstances that led to the initial issuance of the order Denying Export Privileges on January 31, 2005, and on the additional evidence supplied by OEE, that the renewal of this TDO for a period of 180 days is necessary and in the public interest, to prevent an imminent violation of the EAR. Furthermore, I find that the addition of Wang as a related party to this Order is necessary to prevent the evasion of the Order. All parties to this TDO have been given notice of the request for renewal and, in the case of Wang, of the request for the addition of a related party.

It is therefore ordered:

First, that the Respondents, Wen Enterprises, 402 Wild Oak Drive, Manitowoc, WI 54220; Ning Wen, 402 Wild Oak Drive, Manitowoc, WI 54220; Hailin Lin, 402 Wild Oak Drive, Manitowoc, WI 54220; and Beijing Rich Linscience Electronics Company, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 (hereinafter collectively referred to as "Respondents"), and their successors and assigns and when acting on behalf of any of the Respondents, their officers, employees, agents or representatives, ("Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Export Administration Regulations ("EAR"), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the EAR that has been exported from the United States.

D. Obtain from the Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has

been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person is such service involved the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, having been provided notice and opportunity for comment as provided in section 766.23 of the EAR, Ruo Ling Wang, No. 2 Zhong Guan Cun South Avenue, Cyber Mode Room 1001, Haidian District, Beijing, China 100086 (hereinafter, "Related Party") shall be made subject to the provisions of this Order based on her relationship to BRLE by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services.

Fourth, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position or responsibility in that conduct of trade or related services may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.23(c) of the EAR, the Related Party may, at any time, make an appeal related to this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and the Related Party, and shall be published in the **Federal Register**.

This Order is effective on July 31, 2005 and shall remain in effect for 180 days.

Entered this 26th day of July, 2005.

Wendy Wysong,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–15140 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Submission for OMB Review; Comment Request

Bureau: International Trade Administration, Import Administration.

Title: Petition Format for Requesting Relief Under U.S. Antidumping Duty Law.

Summary: DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Agency Form Number: ITA–357P.

OMB Number: 0625–0105.

Type of Request: Regular submission.

Burden: 2,200 hours.

Number of Respondents: 55.

Average Hours Per Response: 40.

Needs and Uses: The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty laws. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–357P—Format for Petition Requesting Relief Under the U.S. Antidumping Duty Law—is designed for U.S. companies or industries that are unfamiliar with the antidumping law and the petition process. The Form is designed for potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is selling a product in the United States at less than fair value. Since a variety of detailed information is required under the law before initiation of an antidumping duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. E-mail: *dhynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, by email *david_rostker@omb.eop.gov* or fax: (202) 395–7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: July 26, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–4083 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review: Not later than the last day of August 2005, interested parties may request

administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina:	
Oil Country Tubular Goods, A–357–810	8/1/04–7/31/05
Seamless Line and Pressure Pipe, A–357–809	8/1/04–7/31/05
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/04–7/31/05
Belgium: Cut-to-Length Carbon Steel Plate, A–423–805	8/1/04–7/31/05
Brazil:	
Cut-to-Length Carbon Steel Plate, A–351–817	8/1/04–7/31/05
Seamless Line and Pressure Pipe, A–351–826	8/1/04–7/31/05
Canada: Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/04–7/31/05
Czech Republic: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–851–802	8/1/04–7/31/05
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/04–7/31/05
France: Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/04–7/31/05
Germany:	
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/04–7/31/05
Cut-to-Length Carbon Steel Plate, A–428–816	8/1/04–7/31/05
Seamless Line and Pressure Pipe, A–428–820	8/1/04–7/31/05
Italy:	
Grain Oriented Electrical Steel, A–475–811	8/1/04–7/31/05
Oil Country Tubular Goods, A–475–816	8/1/04–7/31/05
Granular Polytetrafluoroethylene Resin, A–475–703	8/1/04–7/31/05
JAPAN:	
Brass Sheet & Strip, A–588–704	8/1/04–7/31/05
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/04–7/31/05
Oil Country Tubular Goods, A–588–835	8/1/04–7/31/05
Granular Polytetrafluoroethylene Resin, A–588–707	8/1/04–7/31/05
Tin Mill Products, A–588–854	8/1/04–7/31/05
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	1/26/04–7/31/05
Mexico:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–201–827	8/1/04–7/31/05
Gray Portland Cement and Cement Clinker, A–201–802	8/1/04–7/31/05
Cut-to-Length Carbon Steel Plate, A–201–809	8/1/04–7/31/05
Oil Country Tubular Goods, AS–201–817	8/1/04–7/31/05
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/04–7/31/05
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/04–7/31/05
Oil Country Tubular Goods, A–580–825	8/1/04–7/31/05
Structural Steel Beams, A–580–841	8/1/04–7/31/05
Romania:	
Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–485–805	8/1/04–7/31/05
Cut-to-Length Carbon Steel Plate, A–485–803	8/1/04–7/31/05
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/04–7/31/05
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/04–7/31/05
Thailand: Polyethylene Retail Carrier Bags, A–549–821	1/26/04–7/31/05
The People's Republic of China:	
Floor Standing Metal-Top Ironing Tables and Parts Thereof, A–570–888	2/3/04–7/31/05
Petroleum Wax Candles, A–570–504	8/1/04–7/31/05
Polyethylene Retail Carrier Bags, A–570–886	1/26/04–7/31/05
Sulfanilic Acid, A–570–815	8/1/04–7/31/05
Tetrahydrofurfuryl Alcohol, A–570–887	1/27/04–7/31/05
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/04–7/31/05
Turkey: Aspirin, A–489–602	8/1/04–8/19/04
Vietnam: Frozen Fish Fillets, A–552–801	8/1/04–7/31/05
Countervailing Duty Proceedings	
Belguim: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/04–12/31/04
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/04–12/31/04
Canada:	
Pure Magnesium, C–122–815	1/1/04–12/31/04
Alloy Magnesium, C–122–815	1/1/04–12/31/04
France: Corrosion-Resistant Carbon Steel Flat Products, C–427–810	1/1/04–12/31/04
Stainless Steel Sheet and Strip in Coils, C–427–815	1/1/04–12/31/04
Germany:	
Corrosion-Resistant Carbon Steel, C–428–817	1/1/04–3/31/04
Cut-to-Length Carbon Steel Plate, C–428–817	1/1/04–3/31/04
Italy:	
Oil Country Tubular Goods, C–475–817	1/1/04–12/31/04
Stainless Steel Sheet and Strip in Coils, C–475–825	1/1/04–12/31/04
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/04–12/31/04
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/04–12/31/04
Dynamic Random Access Memory Semiconductors, C–580–851	1/1/04–12/31/04

	Period
Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/04–12/31/04
Structural Steel Beams, C–580–842	1/1/04–12/31/04
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/04–12/31/04
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/04–12/31/04
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/04–12/31/04

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 2005. If the Department does not receive, by the last day of August 2005, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 15, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–4072 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DS–P

Antidumping Duty Proceedings	DOC Contact
Pure Magnesium (Ingot) from the PRC (A–570–832)	Maureen Flannery (202) 482–3020.
Welded ASTM A–312 Stainless Steel Pipe from South Korea (A–580–810)	Dana Mermelstein (202) 482–1391.
Welded ASTM A–312 Stainless Steel Pipe from Taiwan (A–583–815)	Dana Mermelstein (202) 482–1391.
Countervailing Duty Proceedings	
No countervailing duty proceedings are scheduled for initiation in September 2005.	
Suspended Investigations	
No suspended investigations are scheduled for initiation in September 2005.	

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for September 2005

The following sunset reviews are scheduled for initiation in September 2005 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin"). The Notice of Initiation of Five-year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in sunset reviews.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the sunset review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 26, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–4090 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A 588–707]

Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 10, 2005, the Department of Commerce published a notice of intent to rescind an administrative review of the antidumping duty order on granular polytetrafluoroetheylene resin from Japan for the period August 1, 2003, through July 31, 2004. The Department did not receive any comments or requests for a public hearing in response to this notice, and we are rescinding this administrative review, pursuant to 19 CFR 351.213(d).

EFFECTIVE DATE: August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Dunyako Ahmadu at (202) 482–0198 or Richard Rimlinger at (202) 482–4477, 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 August 28, 1988, the Department of Commerce (the Department) published the antidumping duty order for granular polytetrafluroetheylene (PTFE) resin from Japan. See *Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Japan*, 53 FR 32267 (August 28, 1988). On August 3, 2004, we published a notice of opportunity to request an administrative review of this order for the period August 1, 2003, through July 31, 2004. See *Notice of Opportunity to Request Administrative Review of Antidumping Duty Order, Finding or Suspended Investigation*, 69 FR 46496 (August 3, 2004). On August 30, 2004, Asahi Glass Fluoropolymers Ltd., a Japanese producer and exporter of the subject merchandise, and AGC Chemicals America, an affiliated U.S. importer of subject merchandise (collectively AGC), made a timely request that the Department conduct an administrative review of AGC. On September 22, 2004, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. See *Notice of Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004). On October 8, 2004, the Department issued its antidumping duty questionnaire to AGC.

On November 2, 2004, AGC submitted a letter to the Department indicating that it did not have any shipments or entries of subject merchandise during the period of review but had one U.S. sale of PTFE resin during the period of review. As a result, on November 29, 2004, the Department issued a memorandum recommending rescission of the 2003–2004 administrative review and invited interested parties to comment. See *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary* dated November 29, 2004, (*November 29 Memorandum*). On December 10, 2004, AGC submitted comments in disagreement with the recommendation in the *November 29 Memorandum*. AGC argued that the Department does not have an established practice of conditioning an administrative review on the existence of entries during the period of review and that the Department's interpretation of 19 CFR 351.213(e) in this instance is inconsistent with the plain meaning of the regulation. AGC also argued that because no review of AGC's sales has occurred since the imposition of the antidumping duty order on August 28, 1988, the 2003–2004 administrative review would determine a more accurate deposit rate and, therefore, the Department should not rescind the administrative review.

On May 10, 2005, the Department published a notice of intent to rescind the 2003–2004 review and invited interested parties to request a hearing or submit case briefs within 20 days of its publication. See *Granular Polytetrafluoroethylene Resin from Japan: Notice of Intent to Rescind Antidumping Duty Administrative Review*, 70 FR 24510 (May 10, 2005). We received no requests for a hearing or submissions of case briefs.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if we conclude that during the period of review there were "no entries, exports, or sales of the subject merchandise." Contrary to AGC's arguments, the Department's practice, supported by substantial precedent, requires that there be entries during the period of review upon which to assess antidumping duties, irrespective of the export–price or constructed export–price designation of U.S. sales. See, *e.g.*, *Stainless Steel Plate in Coils from Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 68 FR 63067 (November 7, 2003); *Stainless Steel Plate in Coils From Taiwan: Final Rescission of Antidumping Duty Administrative Review*, 69 FR 20859 (April 19, 2004).

Given that AGC had no entries of subject merchandise during the period of review and that AGC has no entry under suspension of liquidation that corresponds to the sale which occurred during the period of review, we would be unable to assess any antidumping duties resulting from this administrative review. See *November 29 Memorandum*. Accordingly, we are rescinding the 2003–2004 administrative review of PTFE resin from Japan pursuant to 19 CFR 351.213(d)(3).

This notice is published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 22, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4073 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–810)

Mechanical Transfer Presses from Japan: Final Results of Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 2, 2005, the Department of Commerce ("Department") initiated the second sunset review of the antidumping duty order on mechanical transfer presses from Japan (70 FR 22632). Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

EFFECTIVE DATE: June 21, 2005

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Martha Douthit, 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) 482–5255 or (202) 482–5050, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1990, the Department issued antidumping duty order on mechanical transfer presses from Japan (55 FR 5642). On June 1, 1999, the Department initiated a sunset review of this order. The Department later published its notice of continuation of the antidumping duty order. *See* 65 FR 38507 (June 21, 2000).

On May 2, 2005, the Department of Commerce ("Department") initiated the second sunset review of the antidumping duty order on mechanical transfer presses from Japan (70 FR 22632). We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the deadline date. *See* 19 CFR 351.218(d)(1)(iii)(A). As a result, the Department determined that no domestic interested party intends to participate in the sunset review, and on May 27, 2005, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Scope of the Order

Imports covered by this antidumping duty order include mechanical transfer presses, currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.10.0035, 8466.94.6540 and 8466.94.8540 and formerly classifiable as 8462.99:8035, 8462.21.8085, and 8466.94.5040. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive. The term "mechanical transfer presses" refers to automatic metal–forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(2)(i) and section 751(c)(6)(A)(iii) of the Act, we are revoking this antidumping duty order effective June 21, 2005, the fifth anniversary of the date the Department published the continuation of the antidumping duty order.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after June 21, 2005. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative review of this order and will conduct administrative review of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year (sunset) review and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: July 22, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4074 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before September 30, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Paula R. Stuart, 301–427–2300 or *paula.stuart@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. The natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records.

The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted to meet the requirements found at 50 CFR 216.23(c).

III. Data

OMB Number: 0648–0179.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 54.
Estimated Time Per Response: 2 hours for an application and 2 hours for a report.
Estimated Total Annual Burden Hours: 108.
Estimated Total Annual Cost to Public: $54.

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, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 26, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–15110 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072505A]

Nominations to the Marine Fisheries Advisory Committee (MAFAC)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: The Marine Fisheries Advisory Committee (Committee) is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the NMFS. Nominations are encouraged from all interested parties involved with or representing interests affected by NMFS actions in managing living marine resources. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two meetings annually. Individuals serve for a term of three years for no more than two consecutive terms if re-appointed. The NMFS anticipates selecting up to eight new members to serve during the 2006–2009 term.

DATES: Nominations must be postmarked on or before September 12, 2005.

ADDRESSES: Nominations should be sent to Laurel Bryant, Executive Director, MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway #9508, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, MAFAC Executive Director; (301) 713–2379 x171; e-mail: *Laurel.Bryant@noaa.gov.*

SUPPLEMENTARY INFORMATION: The establishment of the Marine Fisheries Advisory Committee (MAFAC) was approved by the Secretary on December 28, 1970, and initially chartered under the Federal Advisory Committee Act, 5, U.S.C. App.2, on February 17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Secretary. No less that 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups from a balance of geographical regions, including the Hawaiian, Pacific and U.S. Virgin Islands.

A MAFAC member cannot be a Federal employee or a member of a Regional Fishery Management Council. Selected candidates must pass security checks and submit financial disclosure forms. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each submission should include the submitting person or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae and/or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, phone number, fax number, and e-mail address if available

Nominations should be sent to (see **ADDRESSES**) and nominations must be received by (see **DATES**). The full text of the Committee Charter and its current membership can be viewed at the NMFS's web page at *www.nmfs.noaa.gov/mafac.htm.*

Dated: July 26, 2005.

Gordon J. Helm

Acting Director, Office of Constituent Services, National Marine Fisheries Service.

[FR Doc. 05–15141 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072605A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Jason T. Crichton on behalf of the South Carolina Aquarium. If granted, the EFP would authorize the applicant, with certain conditions, to collect numerous species of fish and invertebrates from Federal waters off the coast of South Carolina from 2005 to 2007. The collected species would be displayed at the South Carolina Aquarium in Charleston, SC.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on August 16, 2005.

ADDRESSES: Comments on the application may be sent via fax to 727–824–5308 or mailed to: Julie Weeder, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may be submitted by e-mail to *sc.aquarium@noaa.gov*. Include in the subject line of the e-mail document the following text: Comment on South Carolina Aquariums EFP Application. The application and related documents are available for review upon written request to the NMFS address above or to *julie.weeder@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Julie Weeder, 727–824–5305; fax 727–824–5308; e-mail: *julie.weeder@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, the South Carolina Aquarium is a not-for-profit, educational and conservation based organization that displays specimens indigenous to South Carolina. The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans (FMPs) for the Snapper-Grouper Fishery of the South Atlantic Region, Shrimp Fishery of the South Atlantic Region, Atlantic Coast Red Drum, Spiny Lobster in the Gulf of Mexico and South Atlantic, and Coastal Migratory Pelagic Resources in Gulf of Mexico and South Atlantic.

The applicant requires authorization to harvest and possess up to 50 spiny lobster, 750 penaeid shrimp, 6 wahoo, 50 pompano, 25 porkfish, 25 sheepshead, 24 triggerfish (*Balistes* spp.), 125 porgies (*Calamus* spp.), 6 ocean triggerfish, 75 jacks (*Caranx* spp.), 50 sea basses (*Centropristis* spp.), 75 spadefish, 85 groupers (*Epinephelus* spp.), 115 grunts (*Haemulon* spp.), 3 puddingwife, 150 snappers (*Lutjanus* spp.), 25 sand tilefish, 100 groupers (*Myctoperca* spp.), 12 yellowtail snapper, 25 red porgy, 12 cobia, 25 vermilion snapper, 25 red drum, 25 cero, and 100 jacks (*Seriola* spp.). Collections would occur in Federal waters off the coast of South Carolina between August 1, 2005 and July 31, 2007. Specimens would be collected using the following gear and methods: hand nets, dip nets, vertical hook-and-line and trolling with rod and reel and natural and artificial bait, sea bass pots, spiny lobster traps, and golden crab traps.

NMFS finds that this application warrants further consideration, based on a preliminary review, and intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number of specimens of any or all species to be collected; restrictions on the size of fish to be collected; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates, and/or seasons allowed for collection of any or all species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with South Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24-month effective period for the EFP.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2005.

Alan D. Risenhoover

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4080 Filed 7–29–E5; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071105A]

Endangered Species; File No. 1526

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Andre Landry, Sea Turtle and Fisheries Ecology Research Lab, Texas A&M University at Galveston, 5007 Avenue U, Galveston, TX 77553 has been issued a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5517.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 25, 2005, notice was published in the **Federal Register** (70 FR 21178) that a request for a scientific research permit to take loggerhead, Kemp's ridley, hawksbill, and green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1526 authorizes Dr. Landry to study Kemp's ridley, loggerhead, green, and hawksbill sea turtles in the Gulf of Mexico to identify their relative abundance over time; detect changes in sea turtle size composition; document movement and migration patterns; and determine the role of nearshore habitats in sea turtle survival.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 26, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–15143 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Thunder Bay National Marine Sanctuary and Underwater Preserve Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Thunder Bay National Marine Sanctuary and Underwater Preserve (TBNMS&UP) is seeking applications for the following seats on the Advisory Council: Tourism; Diving (including snorkeling); Education (elementary, junior high, high school); Maritime History and Interpretation; Citizen-at-Large; Higher Education—Alternate.

Applicants are chosen based upon their particular expertise and experiences in relation to the seat for which they are applying; community and professional affiliations; and the length of residence in the area affected by the Sanctuary & Preserve. Applicants who are chosen as members should expect to serve 3–year terms pursuant to the Council's Charter. Applicants should be available to attend approximately 6 meetings annually.

DATES: Applications are due by August 25, 2005.

ADDRESSES: Application kits may be obtained from Jean Prevo, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street, Room 109, Alpena, Michigan 49707. All completed applications should be sent to the Alpena address.

FOR FURTHER INFORMATION CONTACT: Jeff Gray, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street, Room 109, Alpena, MI 49707, (989) 356–8805 ext. 12 phone, (989) 354–0144 FAX, *jeff.gray@noaa.gov*.

SUPPLEMENTARY INFORMATION: The current TBNMS&UP Advisory Council was established in 2001 to provide advice and recommendations to the Sanctuary Manager and the Joint Management Committee (a state/Federal body to oversee major policy, management and budget issues concerning the Sanctuary & Preserve) regarding the management and operation of the TBNMS&UP. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary & Preserve waters. The Council's 15 voting members represent a variety of local constituent groups, as well as the general public, plus five local governmental jurisdictions.

The Council is supported by four working groups: Education, Outreach, Volunteer and Mooring Buoy Working Groups. Each group deals with matters concerning education, outreach, volunteers and resource protection.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop program goals. The Council works to advise the Sanctuary Manager by keeping him informed about areas of concern from their constituents, as well as offering recommendations on specific issues that may occur.

The Sanctuary & Preserve was established to manage and protect Thunder Bay's historic collection of over 100 shipwrecks. NOAA and the State of Michigan are equal partners in the management of TBNMS&UP. Both NOAA and the State will mutually agree on the selection of the vacant seat members.

Authority: 16 U.S.C. Section 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 26, 2005.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–15144 Filed 7–29–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 25, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–1021–005.

Applicants: Ontario Energy Trading International Corp.

Description: Ontario Energy Trading International Corp., pursuant to the Commission's 6/24/05 letter order (111 FERC ¶ 61,466 (2005)), submits a revision to its market-based rate tariff to incorporate the Commission's change in status reporting requirement .

Filed Date: 07/18/2005.

Accession Number: 20050720–0106.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER02–1367–003; ER02–1959–002; ER03–25–002; ER99–616–002; ER03–49–000.

Applicants: Calpine Oneta Power, L.P.; CPN Bethpage 3rd Turbine, Inc.; Blue Spruce Energy Center, LLC; Dighton Power Associates, L.P.; Riverside Energy Center, LLC.

Description: The Calpine Entities referenced above submit a joint updated market power analysis and revised market-based rate tariffs to reflecting the reporting requirements adopted by the Commission in Order No. 652.

Filed Date: 07/18/2005.

Accession Number: 20050720–0198.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER05–170–002.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a compliance filing pursuant to the Commission's order issued 6/15/05, 111 FERC ¶ 61,394 (2005).

Filed Date: 07/15/2005.

Accession Number: 20050718–0234.

Comment Date: 5 p.m. eastern time on Friday, August 5, 2005.

Docket Numbers: ER05–1047–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an amendment to its 5/31/05 filing in Docket No. ER05–1047–000 of an interconnection and operation agreement among East Ridge Transmission, LLC, the Midwest ISO and Great River Energy.

Filed Date: 07/18/2005.

Accession Number: 20050720–0105.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER05–1048–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. amends its 5/31/05 filing in Docket No. ER05–1048–000 of an interconnection and operation agreement among Wolf Wind Transmission, LLC, the Midwest ISO and Great River Energy

Filed Date: 07/18/2005.

Accession Number: 20050720–0104.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER05–1214–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company (SCE) submits the Wintec III Project Interconnection Facilities Agreement and the Service Agreement for Wholesale Distribution Service between SCE and Wintec Energy, Ltd.

Filed Date: 07/15/2005.

Accession Number: 20050718–0114.

Comment Date: 5 p.m. eastern time on Friday, August 5, 2005.

Docket Numbers: ER05–1223–000.

Applicants: Florida Keys Electric Cooperative Association, Inc.

Description: Florida Keys Electric Cooperative Association, Inc submits a notice of cancellation of its agreement to provide capacity and energy to Florida Power &Light Company, designated as Rate Schedule 1.

Filed Date: 07/18/2005.

Accession Number: 20050720–0108.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER05–1224–000.

Applicants: InterCoast Power Marketing Company.

Description: InterCoast Power Marketing Company notifies FERC of its cancellation, surrender, and relinquishment of authority granted by FERC to make wholesale sales of electricity at market-based rates.

Filed Date: 07/18/2005.

Accession Number: 20050720–0109.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER05–1150–001.

Applicants: Duke Energy Corporation.

Description: Duke Energy Corporation on behalf of Duke Electric Transmission submitted an errata to its 6/27/05 filing of its Network Integration Transmission Service Agreement between itself and New Horizon Electric Cooperative, Inc.

Filed Date: 07/13/2005.

Accession Number: 20050715–0157.

Comment Date: 5 p.m. eastern time on Wednesday, August 3, 2005.

Docket Numbers: ER94–1188–036; ER98–4540–005; ER99–1623–005; ER98–1279–007; EL05–99–000.

Applicants: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; Western Kentucky Energy Corporation.

Description: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; Western Kentucky Energy Corporation submit an amendment to their 7/5/05 filing submitted in compliance with the Commission's order issued May 5, 2005, 111 FERC ¶ 61,153 (2005).

Filed Date: 07/15/2005.

Accession Number: 20050719–0099.

Comment Date: 5 p.m. eastern time on Friday, August 5, 2005.

Docket Numbers: ER96–1085–008.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric and Gas Company submits a revised negotiated market sales tariff designated as FERC Electric Tariff, Fourth Revised Volume No. 2, pursuant to the Commission's 6/16/05 Order, 111 FERC ¶ 61,410 (2005).

Filed Date: 07/18/2005.

Accession Number: 20050720–0200.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Docket Numbers: ER96–1551–014; ER01–615–010; and EL05–2–000

Applicants: Public Service Company of New Mexico.

Description: Public Service Company New Mexico submits a compliance filing pursuant to the Commission's order issued 4/14/05, 111 FERC ¶ 61,038 (2005).

Filed Date: 07/15/2005.

Accession Number: 20050719–0138.

Comment Date: 5 p.m. eastern time on Friday, August 5, 2005.

Docket Numbers: ER96–2143–015.

Applicants: Monterey Consulting Associates Inc.

Description: Monterey Consulting Associates, Inc submits its updated Market Power Analysis in compliance with the Commission's order issued May 31, 2005, 111 FERC ¶ 61,295 (2005).

Filed Date: 07/15/2005.

Accession Number: 20050720–0107.

Comment Date: 5 p.m. eastern time on Friday, August 5, 2005.

Docket Numbers: ER99–4160–003; ER99–4160–008; ER98–1127–005; ER98–1796–006; ER99–1115–007; ER99–1116–007; ER99–1567–004; ER99–2157–004; ER00–1049–005; ER00–1895–005; ER01–140–004; ER01–141–004; ER01–943–004; ER01–1044–005; ER01–3109–005; ER02–506–005; ER02–553–004; ER98–2782–009; ER02–2202–008; ER03–42–009.

Applicants: Dynegy Power Marketing, Inc.; El Segundo Power, LLC; Long Beach Generation, LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Rockingham Power, L.L.C.; Rocky Road Power, LLC; Calcasieu Power, LLC; Dynegy Midwest Generation, Inc.; Dynegy Danskammer, L.L.C.; Dynegy Roseton, L.L.C.; Heard County Power, L.L.C.; Riverside Generating Company, L.L.C.; Renaissance Power, L.L.C.; Bluegrass Generation Company, L.L.C.; Rolling Hills Generating, L.L.C.; AG-Energy, L.P.; Seneca Power Partners, Sterling Power Partners, L.P., Sithe/Independent Power Partners, L.P., Sithe Energy Marketing, L.P.; Power City Partners, L.P.

Description: The various subsidiaries of Dynegy Inc. with market-based rate authority submit revisions to their market-based rate tariffs to incorporate the change in status reporting requirement in compliance with the Commission's 6/16/05 Order, 111 FERC ¶ 61,411 (2005).

Filed Date: 07/18/2005.

Accession Number: 20050721–0186.

Comment Date: 5 p.m. eastern time on Monday, August 8, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at 5 p.m. eastern time. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4081 Filed 7–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

July 25, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER03–256–006; ER05–1227–000.

Applicants: TXU Pedricktown Cogeneration Company LP.

Description: Pedricktown Cogeneration Company LP (successor in interest to TXU Pedricktown Cogeneration Company LP) submits a

notice of cancellation of TXU Pedricktown Cogeneration Company LP's market-based rate tariff, Second Revised Electric Rate Schedule No. 1 and a withdrawal of the triennial updated market analysis filed on 3/8/05 in Docket No. ER03–256–004.

Filed Date: 07/19/2005.

Accession Number: 20050721–0190.

Comment Date: 5 p.m. eastern time on Tuesday, August 09, 2005.

Docket Numbers: ER05–1225–000.

Applicants: New York Industrial Energy Buyers, LLC.

Description: New York Industrial Buyers, LLC submits a petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 07/19/2005.

Accession Number: 20050721–0187.

Comment Date: 5 p.m. eastern time on Tuesday, August 09, 2005.

Docket Numbers: ER05–1226–000.

Applicants: New York Commercial Energy Buyers, LLC.

Description: New York Commercial Energy Buyers, LLC submits a petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 07/20/2005.

Accession Number: 20050721–0189.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Docket Numbers: ER05–375–003; ER02–1582–004; ER02–2102–005; ER00–2885–006 and ER01–2765–005.

Applicants: Arroyo Energy LP; Mohawk River Funding IV, L.L.C.; Utility Contract Funding, L.L.C.; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.

Description: Arroyo Energy LP , Mohawk River Funding IV, L.L.C., Utility Contract Funding, L.L.C., Cedar Brakes I, L.L.C., and Cedar Brakes II, L.L.C. submit a revision to the triennial market power study filed on 7/14/05.

Filed Date: 07/20/2005

Accession Number: 20050721–0148

Comment Date: 5:00 pm Eastern Time on Wednesday, August 10, 2005.

Docket Numbers: ER05–870–001

Applicants: ISO New England Inc. and the New England Power Pool

Description: ISO New England Inc. and the New England Power Pool Participants Committee provide responses to the questions posed in the deficiency letter issued on 6/20/05 regarding their 4/26/05 joint filing in Docket No. ER05–870–000.

Filed Date: 07/20/2005.

Accession Number: 20050722–0281.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Docket Numbers: ER96–110–015.

Applicants: Duke Power, Division of Duke Energy Corporation.

Description: Duke Power, a Division of Duke Energy Corporation informs the Commission of a change in status concerning its market-base authority pursuant to Order 652.

Filed Date: 07/19/2005.

Accession Number: 20050721–0184.

Comment Date: 5 p.m. eastern time on Tuesday, August 09, 2005.

Docket Numbers: ER96–2241–016.

Applicants: Thicksten Grimm Burgum Inc.

Description: Thicksten Grimm Burgum, Inc. submits an updated market power analysis in compliance with the order issued 5/31/05, 111 FERC ¶ 61,295.

Filed Date: 07/20/2005.

Accession Number: 20050722–0280.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4085 Filed 7–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 26, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–2398–009.

Applicants: Liberty Electric Power, LLC.

Description: Liberty Electric Power, LLC supplements the compliance filing submitted on 7/7/05 and tenders for filing a revised tariff sheet designated as First Revised Sheet No. 3 to FERC Electric Tariff, First Revised Volume 1.

Filed Date: 07/20/2005.

Accession Number: 20050722–0284.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Docket Numbers: ER03–552–011; ER03–984–009.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc., in compliance with the Commission's letter order issued 3/23/05 (110 FERC ¶ 61,309), submits a status report on its progress regarding the implementation of the Netting Bilaterals Project.

Filed Date: 07/21/2005.

Accession Number: 20050721–5037

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER05–1020–002.

Applicants: WASP Energy, LLC.

Description: WASP Energy, LLC submits an amendment to its 5/26/05 filing, as amended on 6/24/05, of a petition for acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 07/21/2005.

Accession Number: 20050725–0040.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER05–1079–002.

Applicants: Forest Investment Group, LLC.

Description: Forest Investment Group, LLC submits an amendment to its 6/6/05 filing, as amended on 7/12/05, of a application for market-based rate authority.

Filed Date: 07/21/2005.

Accession Number: 20050725–0041.

Comment Date: 5 p.m. eastern time on Tuesday, August 2, 2005.

Docket Numbers: ER05–1176–001.

Applicants: Adirondack Hydro Development Corporation.

Description: Black Hills Corporation, on behalf of Adirondack Hydro Development Corporation, submits a notice of cancellation of it's discontinued market-based rate wholesale power sales tariff.

Filed Date: 07/19/2005.

Accession Number: 20050725–0042.

Comment Date: 5 p.m. eastern time on Tuesday, August 9, 2005.

Docket Numbers: ER05–1228–000.

Applicants: Sea Breeze Pacific Juan de Fuca Cable, LP.

Description: Sea Breeze Pacific Juan de Fuca Cable, LP submits an application for authorization to sell transmission rights at negotiated rates.

Filed Date: 07/20/2005.

Accession Number: 20050725–0043.

Comment Date: 5 p.m. eastern time on Wednesday, August 10, 2005.

Docket Numbers: ER05–1229–000.

Applicants: Old Dominion Electric Cooperative.

Description: Old Dominion Electric Cooperative, Inc. submits its rate schedule for providing cost-based reactive power and voltage control from generation sources service form Old Dominion's natural gas-fired generating facility located in Louisa County, Virginia.

Filed Date: 07/21/2005.

Accession Number: 20050725–0038.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER05–1230–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits revisions to their open access transmission and energy markets tariff, FERC Electric Tariff, Third Revised Volume No.1.

Filed Date: 07/21/2005.

Accession Number: 20050725–0037.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER05–1231–000.

Applicants: Calpeak Power, LLC.

Description: CalPeak Power, LLC submits certain limited corrections to Schedule D to the reliability must-run service agreement between El Cajon and the California ISO.

Filed Date: 07/21/2005.

Accession Number: 20050725–0039.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Docket Numbers: ER98–3719–007.

Applicants: People's Electric Corporation.

Description: People's Electric Corporation submits an updated market power analysis and revisions to its market based rate tariff in compliance with the Commission's Order issued 5/31/05, 111 FERC ¶ 61,295.

Filed Date: 07/21/2005.

Accession Number: 20050725–0109.

Comment Date: 5 p.m. eastern time on Thursday, August 11, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4086 Filed 7–29–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0033; FRL–7946–9]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Metal Coil Surface Coating Plants (Renewal), ICR Number 1957.04, OMB Number 2060–0487

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 31, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0033, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail

Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004 (69 *FR* 69909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0033, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, or access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NESHAP for Metal Coil Surface Coating Plants (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), for Metal Coil Surface Coating Plants were proposed on July 18, 2000 (65 FR 44616), and promulgated on June 10, 2002 (67 FR 39812) and amended on March 17, 2003 (68 FR 12592). These standards apply to each facility that is a major source of hazardous air pollutant (HAP), at which a coil coating line is operated. This coating line is used to coat metal coil of thicknesses both less than and greater than or equal to 0.15 millimeters (0.006 inches) thick.

Owners or operators must submit notification reports upon construction or reconstruction of any metal coil surface coating plant. Semiannual reports for periods of operation during which the emission limitation is exceeded (or reports certifying that no exceedances have occurred) also are required. Records and reports will be required to be retained for a total of five years.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 119 hours per response. 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.

Respondents/Affected Entities: Owners or operators of metal coil surface coating plants.

Estimated Number of Respondents: 89.

Frequency of Response: Initially, annually, semiannually, weekly, and occasionally.

Estimated Total Annual Hour Burden: 19,901 hours.

Estimated Total Annual Costs: $1,592,013, which includes $0 annualized capital/startup cost and $3,648 O&M costs and $1,588,365 in Respondent Labor costs.

Changes in the Estimates: There is a decrease of 5,147 hours as compared to the active ICR. The reason for this decrease in labor hours is due to the fact that there are no new or reconstructed sources in this renewal that would require reporting requirements associated with this standard.

There is also a significant reduction in the cost burden due to a reduction in the capital/startup costs because monitors do not have to be purchased. However, the cost to operate and maintain (O&M) those monitors continues from year to year.

Dated: July 18, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15146 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0011; FRL–7729–8]

Tribal Educational Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated With Lead; Notice of Availability and Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of additional information and an extension of the application deadline for a Notice of Funding Availability for Tribal Educational Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated With Lead, that was published in the **Federal Register** on Thursday, June 30, 2005. You may access the full text of the updated grant announcement at *http://www.epa.gov/lead*, under the "Lead In

The News" July 2005 section and also at *http://www.grants.gov.*

DATES: The deadline for submitting the grant proposals has been extended to August 30, 2005.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov.*

For technical information contact: Darlene Watford, Program Assessment and Outreach Branch, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0516; e-mail address:*watford.darlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Refer to the original notice published on Thursday, June 30, 2005 (70 FR 37831) (FRL–7706–6), or the updated grants announcement on*http://www.epa.gov/lead* in the "Lead In The News" July 2005 section and at*http://www.grants.gov.*

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for the original notice under docket identification (ID) number OPPT–2005–0011. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system at*http://www.epa.gov/edocket/.* Once in the system, select "search," then key in the appropriate docket ID number.

You may access copies of the updated grants announcement by visiting*http://www.epa.gov/lead,* and then going to the "Lead In The News" July 2005 section and also at*http://www.grants.gov.*

II. Additional Information Provided

EPA has updated the grant announcement entitled *Tribal Educational Outreach on Lead Poisoning and Baseline Assessment of Tribal Children's Existing and Potential Exposure and Risks Associated With Lead,* for which a Notice of Funding Availability published in the **Federal Register** on Thursday, June 30, 2005 (70 FR 37831). The update involves the addition of discussions on the Government Performance Results Act (GPRA) as it relates to the grant program. It does not reflect a change in the original overall grant program description. Since the evaluation criteria in the grant announcement now includes GPRA related factors, applicants should follow the updated grants announcement. As a result of this update to the grant announcement, the deadline for submitting proposals has been extended to August 30, 2005. Instructions for submitting your grant proposals are provided in the grant announcement.

List of Subjects

Environmental protection, Lead, Lead-based paint, Grants, Indians, Maternal and child health, Native Americans, Tribal.

Dated: July 27, 2005.

Margaret Schneider,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–15147 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974, as Amended; Notice of Alteration of System of Records

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice: Alteration of a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Federal Deposit Insurance Corporation ("FDIC") is altering one system of records, entitled Consumer Complaint and Inquiry Records (30–64–0005). We invite public comment on this publication.

DATES: Comments on the alteration of this system of records must be received by the FDIC on or before August 31, 2005. The alterations that are the subject of this notice will become effective 45 days following publication in the **Federal Register,** unless a superseding notice to the contrary is published before that date.

ADDRESSES: You may submit written comments by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on this Web site.
- E-mail: *comments@fdic.gov.* Include "Consumer Complaint and Inquiry Records" in the subject line.
- Mail to: Frederick L. Fisch, Supervisory Counsel, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

Instructions: All submissions should refer to "Consumer Complaint and Inquiry Records". Comments may be posted without change to the FDIC internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided. Comments may also be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Fredrick L. Fisch, Supervisory Counsel, FOIA/Privacy Act Unit, FDIC, 550 17th Street, NW., Washington, DC, 20429, (202) 736–0526.

SUPPLEMENTARY INFORMATION: The system notice for the Consumer Complaint and Inquiry Records system is being altered to provide a more detailed description of the categories of agency records that are maintained in this system of records. This includes adding a reference to inquiries concerning deposit insurance coverage for depositors of FDIC-insured depository institutions. These inquiries comprise at least one-half of the records in this system. The current system notice is also being updated to reflect that this system of records is now managed by the FDIC's Division of Supervision and Consumer Protection ("DSC") as successor to the FDIC's Division of Compliance and Consumer Affairs, which previously managed this system. The FDIC has amended the purpose clause of this system notice to accurately reflect the large number of deposit insurance inquiries and to more clearly state the FDIC's supervisory responsibilities. Finally, the retention

period for records in this system of records is being extended from two to five years to provide a longer timeframe for DSC to perform trends analysis on the consumer data that is collected.

Accordingly. the system of records entitled Consumer Complaint and Inquiry Records (30–64–0005) is altered as follows:

30–64–0005

SYSTEM NAME:

Consumer Complaint and Inquiry Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Division of Supervision and Consumer Protection, FDIC, 550 17th Street, NW., Washington, DC 20429 and the FDIC regional or area offices with supervisory authority over FDIC-insured depository institutions referred to in consumer complaints or inquiries. (See Appendix A for a list of the FDIC regional offices and their addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made inquiries concerning deposit insurance coverage or consumers who have submitted complaints or inquiries concerning the activities or practices of an FDIC-insured depository institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records of correspondence and other communication between the FDIC and depositors who make inquiries concerning deposit insurance coverage or consumers who submit complaints or inquiries relative to the activities or practices of FDIC-insured depository institutions. Information contained in this system of records includes the following: The depositor or consumer's name; the name of the FDIC-insured depository institution subject to the inquiry or complaint; the case number assigned to the inquiry or complaint; the subject matter of the inquiry or complaint; the FDIC office and personnel assigned to review the inquiry or complaint; the status of the FDIC's investigation into the inquiry or complaint; and the FDIC's response to the inquiry or complaint. Supporting records may include, but are not limited to, documents supplied by the depositor or consumer, correspondence between the FDIC and the FDIC-insured depository institution subject to the inquiry or complaint and, when applicable, correspondence between the FDIC and other federal or state regulatory or law enforcement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); Section 202(f) of Title II of the Federal Trade Improvement Act (15 U.S.C. 57a(f)); and Executive Order 12160.

PURPOSE(S):

The system of records is used to facilitate the management of correspondence and other communication from depositors who make inquiries concerning deposit insurance coverage or consumers with inquiries or complaints concerning the activities or practices of FDIC-insured depository institutions. The information in this system supports the FDIC's statutory authority to insure the deposits of financial institutions and to supervise the activities or practices of FDIC-insured state nonmember banks and the insured state branches of foreign banks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the insured depository institution which is the subject of the inquiry or complaint when necessary to investigate or resolve the inquiry or complaint;

(2) To authorized third-party sources during the course of the investigation in order to resolve the inquiry or complaint. Information that may be disclosed under this routine use is limited to the name of the inquirer or complainant and the nature of the inquiry or complaint and such additional information necessary to investigate the inquiry or complaint;

(3) To the Federal or State supervisory/regulatory authority that has direct supervision over the insured depository institution that is the subject of the inquiry or complaint;

(4) To the appropriate Federal, State, or local agency or authority responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(5) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(6) To a congressional office in response to an inquiry made by the congressional office at the request of the individual to whom the record pertains; and

(7) To a consultant, person or entity who contracts or subcontracts with the FDIC, to the extent necessary for the performance of the contract or subcontract. The recipient of the records shall be required to comply with the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and sometimes in paper format within individual file folders.

RETRIEVABILITY:

Electronic media and paper records are indexed and retrieved by unique identification number which may be cross referenced to the name of complainant or inquirer.

SAFEGUARDS:

Electronic records are password protected and accessible only by authorized personnel. Paper records are maintained in lockable metal file cabinets accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained for five years after receipt in accordance with the FDIC Records Retention and Disposition Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Consumer Affairs Branch, Division of Supervision and Consumer Protection, FDIC, 550 17th Street, NW., Washington, DC 20429.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if they are named in this system of records or who are seeking access to records maintained in this system of records must submit their request in writing to the Legal Division, FOIA/PA Unit, FDIC, 550 17th Street, NW., Washington, DC 20429. The request must contain the name and address of the complainant or inquirer and the name and address of the insured depository institution that is the subject of the inquiry or complaint. Individuals requesting their own records must provide their name,

address and a notarized statement attesting to their identity.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above. Individuals wishing to contest or amend information maintained in this system of records should specify the information being contested, their reasons for contesting it, and the proposed amendment to such information.

RECORD SOURCE CATEGORIES:

The sources of records in this category include depositors who make inquiries concerning deposit insurance coverage and consumers with inquiries or complaints concerning the activities or practices of FDIC-insured depository institutions; depository institutions insured by the FDIC that are the subject of an inquiry or complaint; state or federal agencies with supervisory or law enforcement authority over an FDIC-insured depository institution; congressional offices that may facilitate the inquiry or complaint; and other parties providing information to the FDIC in an attempt to facilitate an inquiry or resolve the complaint.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated at Washington, DC, this 19th day of July, 2005.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–15108 Filed 7–29–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–04]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is seeking public comments concerning the information collection known as "Advances to Housing Associates," which has been assigned control number 3069–0005 by the Office of Management and Budget (OMB). The Finance Board intends to submit the information collection to OMB for review and approval of a 3 year extension of the control number, which is due to expire on November 30, 2005.

DATES: Interested persons may submit comments on or before September 30, 2005.

Comments: Submit comments by any of the following methods:

E-mail: *comments@fhfb.gov.*

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington, PC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Collection; Comment Request: Advances to Housing Associates. 2005–N–04.

We will post all public comments we receive on this notice without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Examinations Specialist, Office of Supervision, by telephone at 202–408–2866, by electronic mail at *curtisj@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1430b) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees. The Finance Board refers to nonmember mortgagees as housing associates. In order to be certified as a housing associate, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Part 926 of the Finance Board regulations (12 CFR part 926) implements the statutory eligibility requirements and establishes uniform review criteria an applicant must meet in order to be certified as a housing associate by an FHLBank. More specifically, sections 926.3 and 926.4 (12 CFR 926.3–926.4) implement the statutory eligibility requirements and provide guidance to an applicant on how it may satisfy such requirements. Section 926.5 (12 CFR 926.5) authorizes the FHLBanks to approve or deny all applications for certification as a housing associate, subject to the statutory and regulatory requirements. Section 926.6 (12 CFR 926.6) permits an applicant to appeal an FHLBank decision to deny certification to the Finance Board.

Section 950.17 of the Finance Board regulations (12 CFR 950.17) establishes the terms and conditions under which an FHLBank may make advances to a certified housing associate. Section 950.17 also imposes a continuing obligation on a housing associate to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in sections 926.1 through 926.6 and section 950.17 of the Finance Board regulations (12 CFR 926.1–926.6 and 950.17) is necessary to enable the FHLBanks to determine whether an applicant satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a housing associate eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule an FHLBank decision to deny housing associate certification to an applicant.

The OMB control number for the information collection, which expires on November 30, 2005, is 3069–0005. The likely respondents include applicants for housing associate certification and current housing associates.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at one, with one response per applicant. The estimate for the average hours per application is 10 hours. The estimate for the annual hour burden for applicants is 10 hours (1 applicant × 1 response per applicant × 10 hours).

The Finance Board estimates the total annual average number of maintenance respondents, that is, certified housing associates, at 63, with 1 response per housing associate. The estimate for the average hours per maintenance response is 0.5 hours. The estimate for the annual hour burden for certified housing associates is 31.5 hours (63 certified housing associates × 1 response per associate × 0.5 hours).

The estimate for the total annual hour burden is 41.5 hours (63 housing associates × 1 response per associate ×

0.5 hours + 1 applicant × 1 response per applicant × 10 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on applicants and housing associates, including through the use of automated collection techniques or other forms of information technology.

Date: July 21, 2005.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 05–15111 Filed 7–29–05; 12:45 pm]

BILLING CODE 6725–01–U

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 August 15, 2005.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Basil G. Taylor and Danna Taylor, both of Watonga, Oklahoma; to acquire voting shares of First State Bancorporation of Watonga, Inc., Watonga, Oklahoma and thereby indirectly acquire voting shares of First State Bank, Watonga, Oklahoma.

Board of Governors of the Federal Reserve System, July 26, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15106 Filed 7–29–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank August 25, 2005.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. MetroCorp Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of First United Bank, San Diego, California.

Board of Governors of the Federal Reserve System, July 26, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15105 Filed 7–29–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; 2005 Child Development Associate (CDA) National Credentialing Program; Notice of Correction for the Child Development Associate (CDA) National Credentialing Program, HHS–2005–ACF–ACYF–YD–0064, CFDA # 93.600

AGENCY: Head Start Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of correction.

SUMMARY: This notice is to inform interested parties of a correction made to the Head Start Family Literacy program announcement that was published on July 25, 2005. The following correction should be noted:

Under Section IV. Application and Submission Information, 1. Address to Request Application Package, please delete the following phone number for The Dixon Group: 1–800–351–2293.

Please replace the deleted phone number with the following: 1–866–796–1591.

All other information in this notice of correction is accurate and replaces information specified in the July 25 notice. Applications are still due by the deadline date that was published in the July 25 notice (due date for applications is September 23, 2005).

FOR FURTHER INFORMATION CONTACT: For further information please contact the Administration on Children, Youth and Families, Head Start Bureau, Jean Simpson at (202) 205–8418 or *Jsimpson@acf.hhs.gov.*

Dated: July 26, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–15163 Filed 7–29–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; 2005 Head Start Family Literacy Project; Notice of Correction for the FY 2005 Head Start Family Literacy Project Program Announcement, HHS–2005–ACF–ACYF–YL–0023, CFDA # 93.600

AGENCY: Head Start Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of correction.

SUMMARY: This notice is to inform interested parties of a correction made to the Head Start Family Literacy Project program announcement that was published on July 25, 2005. The following correction should be noted:

Under Section IV. Application and Submission Information, 1. Address to Request Application Package, please delete the following phone number for The Dixon Group: 1–800–351–2293.

Please replace the deleted phone number with the following: 1–866–796–1591.

All other information in this notice of correction is accurate and replaces information specified in the July 25 notice. Applications are still due by the deadline date that was published in the July 25 notice (due date for applications is September 8, 2005).

FOR FURTHER INFORMATION CONTACT: For further information please contact the Administration on Children, Youth and Families, Head Start Bureau, Willa Siegel at (202) 205–4011 or *WSiegel@acf.hhs.gov.*

Dated: July 26, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–15162 Filed 7–29–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2006 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA), authorizes FDA to collect user fees for certain animal drug applications, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2006.

For FY 2006, the animal drug user fee rates are: $151,800 for an animal drug application; $75,900 for a supplemental animal drug application for which safety or effectiveness data is required; $3,905 for an annual product fee; $49,200 for an annual establishment fee; and $44,400 for an annual sponsor fee. FDA will issue invoices for FY 2006 product, establishment, and sponsor fees by December 30, 2005, and these invoices will be due and payable by January 31, 2006.

The application fee rates are effective for applications submitted on or after October 1, 2005, and will remain in effect through September 30, 2006. Applications will not be accepted to review until FDA has received full payment of application fees and any other animal drug user fees owed.

FOR FURTHER INFORMATION CONTACT: Visit the FDA Web site at *http://www.fda.gov/oc/adufa* or contact Robert Miller, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9707. For general questions, you may also e-mail the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j-12) establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j-12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j-12(d)).

For FY 2004 through FY 2008, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2004 are subject to adjustment for inflation and workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for inflation and workload.

II. Revenue Amount for FY 2006 and Adjustments for Inflation and Workload

A. Statutory Fee Revenue Amounts

ADUFA (Public Law 108–130) specifies that the aggregate revenue amount for FY 2006 for each of the four animal drug user fee categories is $2,500,000, before any adjustments for inflation or workload are made (see 21 U.S.C. 379j-12(b)(1)-(4)).

B. Inflation Adjustment to Fee Revenue Amount

ADUFA provides that fee revenue amounts for each FY after 2004 shall be adjusted for inflation (see 21 U.S.C. 379j-12(c)(1)). The adjustment must reflect the greater of: (1) The total percentage change that occurred in the Consumer Price Index (CPI) for all urban consumers (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in Washington, DC. ADUFA provides for this annual adjustment to be cumulative and compounded annually after FY 2004 (see 21 U.S.C. 379j-12(c)(1)).

The inflation adjustment for FY 2005 was 4.42 percent. This was the greater of the CPI increase during the 12-month period ending June 30, 2004, (3.27 percent) or the increase in pay for FY 2004 for Federal employees stationed in Washington, DC (4.42 percent).

The inflation adjustment for FY 2006 is 3.71 percent. This is the greater of the CPI increase during the 12-month period ending June 30, 2005 (2.53 percent) or the increase in pay for FY 2005 for Federal employees stationed in Washington, DC (3.71 percent).

Compounding these amounts (1.0442 times 1.0371) yields a total compounded inflation adjustment of 8.29 percent for FY 2006.

The inflation-adjusted revenue amount for each category of fees for FY 2006 is the statutory fee amount ($2,500,000) increased by 8.29 percent, the inflation adjuster for FY 2006. The inflation-adjusted revenue amount is $2,707,250 for each category of fee, for a total inflation-adjusted fee revenue amount of $10,829,000 for all four categories of fees in FY 2006.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2005, ADUFA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j-12(c)(2)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 3-year period that ended on September 30, 2002, (the base years), and the average number of each of these types of applications and submissions over the most recent 3-year period that ended May 31, 2005.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 3-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 3 years. Column 5 of table 1 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1 the sum of the values in column 5 is added, reflecting a total change in workload of negative 6.4 percent for FY 2006. This is the workload adjuster for FY 2006.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

Application Type	Column 1 3–Year Avg. (Base Years)	Column 2 Latest 3–Year Avg.	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
New Animal Drug Applications (NADAs)	22	18	-18%	3%	-0.5%
Supplemental NADAs with Safety or Efficacy Data	31	13	-58%	12%	-7.0%
Manufacturing Supplements	368	432	+17%	25%	+4.3%
Investigational Study Submissions	272	274	+0.7%	46%	+0.3%
Investigational Protocol Submissions	283	212	-25%	14%	-3.5%
FY 2006 Workload Adjuster					-6.4%

ADUFA specifies that the workload adjuster may not result in fees that are less than the inflation-adjusted revenue amount (21 U.S.C. 379j-12(c)(2)(B)). For this reason, the workload adjustment will not be applied in FY 2006, and the inflation-adjusted revenue amount for each category of fees for FY 2006 ($2,707,250) becomes the revenue target for fees in FY 2006, for a total inflation-adjusted fee revenue target in FY 2006 of $10,829,000 for fees from all four categories.

III. Application Fee Calculations for FY 2006

The terms "animal drug applications" and "supplemental animal drug applications" are defined in 21 U.S.C. 379j-11(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $2,707,250 in fee revenue for FY 2006. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document. The fee for a supplemental animal drug application for which safety or effectiveness data are required is to be set at 50 percent of the animal drug application fee (see 21 U.S.C. 379j-12(a)(1)(A)(ii)).

To set animal drug application fees and supplemental animal drug application fees to realize $2,707,250, FDA must first make some assumptions about the number of fee-paying applications and supplements it will receive in FY 2006.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. Further, it is possible that the user fee program will affect the number of applications submitted, exacerbating the kinds of fluctuation in applications that is normally experienced. In addition, the agency does not know the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug application fees in FY 2006, FDA is assuming that the number of applications that will pay fees in FY 2006 will equal the average number of submissions over the 3 most recent years (including an estimate for the current year). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after nearly 2 years of experience with this program.

Over the past 3 years, the average number of animal drug applications that would have been subject to the full fee was 12, including the number for the most recent year, estimated at 8. Over this same period, the average number of supplemental applications that would have been subject to half of the full fee was 11.7, including the number for the most recent year, estimated at 8.

Thus, for FY 2006, FDA estimates receipt of 12 fee paying original applications and 11.7 fee-paying supplemental animal drug applications.

B. Fee Rates for FY 2006

FDA must set the fee rates for FY 2006 so that the estimated 12 applications that pay the full fee and the estimated 11.7 supplements that pay half of the full fee will generate a total of $2,704,250. To generate this amount, the fee for an animal drug application, rounded to the nearest hundred dollars, will have to be $151,800, and the fee for a supplemental animal drug application for which safety or effectiveness data are required will have to be $75,900.

IV. Product Fee Calculations for FY 2006

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-12(a)(2)). The term "animal drug product" is defined in 21 U.S.C. 379j-11(3). The product fees are to be set so that they will generate $2,707,250 in fee revenue for FY 2006. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug product fees to realize $2,707,250, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2006. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2005, FDA found a total of 770 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that a total of 770 products will be subject to this fee in FY 2006.

The agency does not know the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug product fees in FY 2006, FDA is assuming that 10 percent of the products invoiced, or 77, will not pay fees in FY 2006 due to fee waivers and reductions. Based on experience with other user fee programs and the first 2 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in the third year of this program.

Accordingly, the agency estimates that a total of 693 (770 minus 77) products will be subject to product fees in FY 2006.

B. Product Fee Rates for FY 2006

FDA must set the fee rates for FY 2006 so that the estimated 693 products that pay fees will generate a total of $2,707,250. To generate this amount will require the fee for an animal drug product, rounded to the nearest $5, to be $3,905.

V. Establishment Fee Calculations for FY 2006

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year (see 21 U.S.C. 379j-12(a)(3)). An establishment subject to animal drug establishment fees is assessed only one such fee per fiscal year (see 21 U.S.C. 379j-12(a)(3)). The term "animal drug establishment" is defined in 21 U.S.C. 379j-11(4). The establishment fees are to be set so that they will generate $2,707,250 in fee revenue for FY 2006. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug establishment fees to realize $2,707,250, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2006. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 1, 2005, FDA found a total of 61 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 61 establishments will be subject to this fee in FY 2006.

The agency does not know the number of waivers and reductions that will be granted, though this number will reduce the revenues that the agency will realize. In estimating the fee revenue to be generated by animal drug establishment fees in FY 2006, FDA is assuming that 10 percent of the establishments invoiced, or 6, will not pay fees in FY 2006 due to fee waivers and reductions. Based on experience with other user fee programs and the first 2 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in the third year of this program.

Accordingly, the agency estimates that a total of 55 establishments (61 minus 6) will be subject to establishment fees in FY 2006.

B. Establishment Fee Rates for FY 2006

FDA must set the fee rates for FY 2006 so that the estimated 55 establishments that pay fees will generate a total of $2,707,250. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest $50, to be $49,200.

VI. Sponsor Fee Calculations for FY 2006

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the act or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive; and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003 (see 21 U.S.C. 379j-11(6) and 379j-12(a)(4)). An animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j-12(a)(4)). The sponsor fees are to be set so that they will generate $2,707,250 in fee revenue for FY 2006. This is the amount set out in the statute after it has been adjusted for inflation and workload, as set out in section II of this document.

To set animal drug sponsor fees to realize $2,707,250, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2006. Based on the number of firms that

would have met this definition in each of the past 3 years, FDA estimates that a total of 129 sponsors will meet this definition in FY 2006.

Careful review indicates that about one third or 33 percent of all of these sponsors will qualify for minor use/minor species exemption. Based on the agency's experience with sponsor fees in FY 2004 and FY 2005, FDA's current best estimate is that an additional 20 percent will qualify for other waivers or reductions, for a total of 53 percent of the sponsors invoiced, or 68, who will not pay fees in FY 2006 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in the third year of this program.

Accordingly, the agency estimates that a total of 61 sponsors (129 minus 68) will be subject to sponsor fees in FY 2006.

B. Sponsor Fee Rates for FY 2006

FDA must set the fee rates for FY 2006 so that the estimated 61 sponsors that pay fees will generate a total of $2,707,250. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest $50, to be $44,400.

VII. Adjustment for Excess Collections

Under the provisions of ADUFA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce the adjusted aggregate revenue amount in a subsequent year by that excess amount (21 U.S.C. 379j-12(g)(4)). No adjustment under this provision is required for fees assessed in FY 2006 because FDA has not collected animal drug user fees in excess of amounts provided in appropriations in any previous year.

VIII. Fee Schedule for FY 2006

The fee rates for FY 2006 are summarized in table 2.

TABLE 2.—FY 2006 FEE RATES

Animal Drug User Fee Category	Fee Rate for FY 2006
Animal Drug Application Fee	
Animal Drug Application	$151,800
Supplemental Animal Drug Application for which Safety or Effectiveness Data are Required	$75,900
Animal Drug Product Fee	$3,905
Animal Drug Establishment Fee[1]	$49,200
Animal Drug Sponsor Fee[2]	$44,400

[1]An animal drug establishment is subject to only one such fee each fiscal year.
[2]An animal drug sponsor is subject to only one such fee each fiscal year.

IX. Procedures for Paying the FY 2006 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2005. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number, beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the check and printed copy of the cover sheet to: US Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the US Bank at 314–418–4821. This phone number is only for questions about courier delivery.)

The tax identification number for FDA is 530 19 6965. (Note: In no case should the check for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's Center for Veterinary Medicine (CVM). FDA records the official application receipt date as the later of the following: The date the application was received by CVM, or the date US Bank notifies FDA that your check in the full amount of the payment due has been received. US Bank is required to notify FDA within 1 working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the ADUFA Web site at *http://www.fda.gov/oc/adufa* and, under the "Forms" heading, click on the link "User Fee Cover Sheet." For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process. It may take a day or two to get the organization number and have the user account and password established.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the Payment for your application as described in section IX.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 30, 2005, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2006 using this fee schedule. Payment will be due and payable by January 31, 2006. FDA will issue invoices in October 2006 for any products, establishments, and sponsors subject to fees for FY 2006 that qualify for fees after the December 2005 billing.

Dated: July 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15158 Filed 7–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1571]

Enrofloxacin for Poultry; Final Decision on Withdrawal of New Animal Drug Application Following Formal Evidentiary Public Hearing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final decision setting forth the findings of fact and conclusions of law on the issues addressed in a formal evidentiary public hearing to determine whether FDA should withdraw approval of the new animal drug application (NADA) for use of enrofloxacin in poultry. Once this final decision becomes effective on September 12, 2005, this drug may no longer be distributed or administered for this use in the United States, nor may it be exported except as allowed by law. Elsewhere in this issue of the **Federal Register**, a final rule removing the applicable regulations is published.

ADDRESSES: The transcript of the hearing, evidence submitted, and the final decision, may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these documents.

FOR FURTHER INFORMATION CONTACT: Erik P. Mettler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

On October 31, 2000, FDA's Center for Veterinary Medicine (CVM) proposed to withdraw the approval of the NADA 140–828 for the use in chickens and turkeys of enrofloxacin, an antimicrobial drug belonging to a class of drugs known as fluoroquinolones (65 FR 64954, October 31, 2000). On November 29, 2000, Bayer Corp. (Bayer), the sponsor of enrofloxacin (sold under the trade name Baytril® 3.23% Concentrate Antimicrobial Solution), requested a hearing on the proposed withdrawal. On February 20, 2002, FDA's then Acting Principal Deputy Commissioner published a notice of hearing granting Bayer's request and identifying the factual issues that would be the subject of the evidentiary hearing (67 FR 7700, February 20, 2002). On March 21, 2002, the Animal Health Institute submitted a notice of participation under 21 CFR 12.45. Oral hearing for the purposes of cross-examination of witnesses was held at FDA from April 28 through May 7, 2003. On March 16, 2004, an FDA Administrative Law Judge (ALJ) issued an initial decision under 21 CFR 12.120. The ALJ determined that enrofloxacin had not been "shown to be safe under the conditions of use upon the basis of which the application was approved," as required under section 512(e)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)(1)(B)) and ordered that the approval of the NADA for Baytril be withdrawn. Bayer and CVM each filed exceptions to the initial decision on May 17, 2004.

After reviewing the evidence in the administrative record and the exceptions to the initial decision, I have issued a final decision withdrawing the approval of the NADA for use of enrofloxacin in poultry, for the reasons described more fully in the final decision that is the subject of this notice. In addition, elsewhere in this issue of the **Federal Register**, a final rule removing the applicable regulations is published.

II. Electronic Access

Persons with access to the Internet may obtain the final decision at *www.fda.gov/oc/antimicrobial/baytril.pdf*. The final decision as well as documents cited in the decision are available for inspection by means of writing to, or visiting, the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All other documents related to this docket also are available for inspection, unless considered confidential.

Dated: July 27, 2005.

Lester M. Crawford,

Commissioner of Food and Drugs.

[FR Doc. 05–15224 Filed 7–28–05; 2:31 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Device User Fee Rates for Fiscal Year 2006; Delay in Publication

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a delay in the publication of the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2006.

FOR FURTHER INFORMATION CONTACT:

For further information on MDUFMA: Visit FDA's Internet site at *http://www.fda.gov/oc/mdufma*.

For questions relating to this notice: Frank Claunts, Office of Management (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), authorizes FDA to collect user fees for certain medical device applications in FY 2006 and FY 2007 only if certain conditions are met. Section 738 of the act (21 U.S.C. 379j) establishes fees for certain medical device applications and supplements. However, MDUFMA specifies that for FY 2006 fees may not be assessed if the total amounts appropriated for FY 2003 through FY 2005 for FDA's device and radiological health program are less than levels specified in MDUFMA (21 U.S.C. 379j(g)(1)(C)). Appropriations for FY 2003 through FY 2005 for FDA's device and radiological health program are below the amount specified in MDUFMA. Because of this, FDA is unable to assess or collect medical device user fees in FY 2006 unless additional legislation is enacted to modify those conditions (minimum appropriation levels for FY 2003 through FY 2005). Accordingly, FDA is not publishing the fee rates for FY 2006 at this time. If the required legislation is enacted, within 2 weeks of the date of enactment FDA will make available the fee rates for all applications and supplements submitted on or after October 1, 2005, and through September 30, 2006.

Dated: July 22, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15157 Filed 7–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2006. The Federal Food, Drug, and Cosmetic Act (the FD& C Act), as amended by the Prescription Drug User Fee Amendments of 2002 (Title 5 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (PHSBPRA or PDUFA III)), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts for application fees, establishment fees, and product fees for FY 2006 were established by PDUFA III. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the revenue levels established in the statute, after those amounts have been first adjusted for inflation and workload. This notice establishes fee rates for FY 2006 for application fees for an application requiring clinical data ($767,400), for an application not requiring clinical data or a supplement requiring clinical data ($383,700), for establishment fees ($264,000), and for product fees ($42,130). These fees are effective on October 1, 2005, and will remain in effect through September 30, 2006. For applications and supplements that are submitted on or after October 1, 2005, the new fee schedule must be used. Invoices for establishment and product fees for FY 2006 will be issued in August 2005, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

The FD&C Act, sections 735 and 736 (21 U.S.C. 379g and 379h), establishes three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379h(d)).

For FY 2003 through FY 2007 base revenue amounts for application fees, establishment fees, and product fees are established by PDUFA III. Base revenue amounts established for years after FY 2003 are subject to adjustment for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the revenue levels established in the statute, after those amounts have been first adjusted for inflation and workload. The revenue levels established by PDUFA III continue the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2006 for application, establishment, and product fees. These fees are effective on October 1, 2005, and will remain in effect through September 30, 2006.

II. Revenue Amounts for FY 2006, and Adjustments for Inflation and Workload

A. Statutory Fee Revenue Amounts

PDUFA III specifies that the fee revenue amount for FY 2006 for application fees is $86,434,000 and for both product and establishment fees is $86,433,000, for a total of $259,300,000 from all 3 categories of fees (21 U.S.C. 379h(b)), before any adjustments are made.

B. Inflation Adjustment to Fee Revenue Amount

PDUFA III provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of the following percentage change: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. PDUFA III provides for this annual adjustment to be cumulative and compounded annually after FY 2003 (see 21 U.S.C. 379h(c)(1)).

The inflation increase for FY 2004 was 4.27 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous FY (2003 in this case) for Federal employees stationed in the Washington, DC metropolitan area (4.27 percent).

The inflation increase for FY 2005 was 4.42 percent. This was the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2004—which was 3.27 percent) or the increase in pay for the previous FY (2004 in this case) for Federal employees stationed in the Washington, DC metropolitan area (4.42 percent).

The inflation adjustment for FY 2006 is 3.71 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2005—which was 2.53 percent) or the increase in pay for FY 2005 for Federal employees stationed in the Washington, DC metropolitan area (3.71 percent).

Compounding these amounts (1.0427 times 1.0442 times 1.0371) yields a total compounded inflation adjustment of 12.92 percent for FY 2006.

The inflation adjustment for each category of fees for FY 2006 is the statutory fee amount increased by 12.92 percent, the inflation adjuster for FY 2006. The FY 2006 inflation-adjusted revenue amount for application fees is $97,601,273 ($86,434,000 times 1.1292). For both product and establishment fees the inflation-adjusted revenue amount is $97,600,144 ($86,433,000 times 1.1292). The total inflation-adjusted fee revenue amount for all three fee categories combined is $292,801,561 in FY 2006.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2004, PDUFA III provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see 21 U.S.C. 379h(c)(2)).

The conference report accompanying the Prescription Drug User Fee Amendments of 2002, House of Representatives Report number 107–481, provides guidance on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number each of the four types of applications specified in the workload adjustment provision (human drug applications, commercial investigational new drug applications, efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the

average number of each of these types of applications over the most recent 5-year period that ended June 30, 2005.

The results of these calculations are presented in the first 2 columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. This weighting factor was developed by averaging data generated in a 2002 KPMG study of FDA's drug review workload and data from FDA's time reporting systems to submission data for the most recent 5-year period. Column 5 of table 1 of this document is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total increase in workload of 1.43 percent for FY 2006 when compared to the base years.

TABLE 1:—WORKLOAD ADJUSTER CALCULATION

Application Type	Summary of Workload Adjustment Calculations				
	Column 1 5-Year Avg. Base Years	Column 2 Latest 5-Year Avg.	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
NDA's/BLA's	119.6	116.2	-2.8%	41.9%	-1.19%
Commercial IND's	629.8	641.6	1.9%	41.8%	0.78%
Efficacy Supps.	159.2	166.0	4.3%	6.0%	0.26%
Manufacturing Supps.	2,100.6	2,422.8	15.3%	10.3%	1.58%
FY 2006 Workload Adjuster					1.43%

Increasing the inflation-adjusted revenue amount for application fees of $97,601,273 by the FY 2005 workload adjuster (1.43 percent) results in an increase of $1,395,698, for a total inflation and workload adjusted application fee revenue amount of $98,996,971. Increasing the inflation-adjusted revenue amount for establishment and product fees, each of which is $97,600,144, by the FY 2005 workload adjuster (1.43 percent) results in an increase of $1,395,682, for a total inflation and workload adjusted application fee revenue amount of $98,995,826 for each category. The total FY 2006 inflation and workload adjusted fee revenue target for all three fee categories combined is $296,988,623.

III. Application Fee Calculations

PDUFA III provides that the rates for application, product, and establishment fees be established 60 days before the beginning of each FY (21 U.S.C. 379h(c)(4)). The fees are to be established so that they will generate the fee revenue amounts specified in the statute, as adjusted for inflation and workload.

A. Application Fee Revenues and Application Fees

The application fee revenue amount that PDUFA III established for FY 2006 is $98,996,971, as calculated in section II.C of this document. Application fees will be set to generate this amount.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2003 through FY 2007, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the five most recent fiscal years. This use of the rolling average of the five most recent fiscal years is the same method that was applied in making the workload adjustment.

In estimating the number of fee-paying FAE's that FDA will receive in FY 2006, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2001 through 2005. For FY 2005, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months.

Table 2 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2005, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2005. Column 4 estimates the 12-month total fee-paying FAEs for FY 2005 based on the applications received through June 30, 2005. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if it initially paid a full application fee, or one-eighth of an FAE if it initially paid one-half of the full application fee amount.

TABLE 2.—FY 2005 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2005, AND PROJECTED THROUGH SEPTEMBER 30, 2005

Application or Action	Column 1 Total Received Through 6/30/2005	Column 2 Fee Exempt or Waived Through 6/30/2005	Column 3 Total Fee Paying Through 6/30/2005	Column 4 12-Month Projection
Applications Requiring Clinical Data	70.0	23.0	47.0	62.7
Applications Not Requiring Clinical Data	4	0.0	4	5.3

TABLE 2.—FY 2005 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2005, AND PROJECTED THROUGH SEPTEMBER 30, 2005—Continued

Application or Action	Column 1 Total Received Through 6/30/2005	Column 2 Fee Exempt or Waived Through 6/30/2005	Column 3 Total Fee Paying Through 6/30/2005	Column 4 12-Month Projection
Supplements Requiring Clinical Data	45	5.0	40	53.3
Withdrawn or Refused to File	0.25	0.0	0.25	0.3
Total	119.25	28.0	91.25	121.6

In the first 9 months of FY 2005 FDA received 119.25 FAE's, of which 91.25 were fee-paying. Based on data from the last 7 fiscal years, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 91.25 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the FY and projects the number of fee-paying FAEs in FY 2005 at 121.6.

All pediatric supplements, which had been exempt from fees prior to January 4, 2002, were required to pay fees effective January 4, 2002. This is the result of section 5 of the Best Pharmaceuticals for Children Act that repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, in estimating FY 2006 fee-paying receipts we must add all the pediatric supplements that were previously exempt from fees prior to January 4, 2002. The exempted number of FAEs for pediatric supplements for FY 2001 and FY 2002 respectively were 19 and 4.5. Since fees on these supplements are paid for pediatric applications submitted in FY 2003 and beyond, the number of pediatric supplement FAEs exempted from fees each in both FY 2001 and FY 2002 (the years in the table when fees were exempted) are added to the total of fee-paying FAEs received each year.

As table 3 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, assuming all pediatric supplements had paid fees, and including our estimate for FY 2005, is 129 FAEs. FDA will set fees for FY 2006 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 3.—FEE-PAYING FULL APPLICATION EQUIVALENT—FIVE YEAR AVERAGE

Year	2001	2002	2003	2004	2005	5-Year Avg.
Fee-Paying FAEs	107.6	127.6	119.5	145.1	121.6	124.3
Exempt Pediatric Supplement FAEs	19.0	4.5	0.0	0.0	0.0	4.7
Total	126.6	132.1	119.5	145.1	121.6	129.0

The FY 2006 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 129, into the fee revenue amount to be derived from application fees in FY 2006, $98,996,971. The result, rounded to the nearest one hundred dollars, is a fee of $767,400 per full application requiring clinical data, and $383,700 per application not requiring clinical data or per supplement requiring clinical data.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of PDUFA, as amended, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA fee revenue. To date, collections for FY 1998 total $117,737,470—a total of $615,470 in excess of the appropriation limit. This is the only FY since 1997 in which FDA has collected more in PDUFA fees than Congress appropriated.

FDA also has some requests for waivers or reductions of FY 1998 fees that have been decided but that are pending appeals. For this reason, FDA is not reducing its FY 2006 fees to offset excess collections at this time. An offset will be considered in a future year, if FDA still has collections in excess of appropriations for FY 1998 after the pending appeals for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2005, the establishment fee was based on an estimate that 354 establishments would be subject to and would pay fees. By the end of FY 2005, FDA estimates that 400 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2005, for a net of 375 fee-paying establishments. FDA will use this same number again, 375, for its FY 2006 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($98,995,826) by the estimated 375 establishments, for an establishment fee rate for FY 2006 of $264,000 (rounded to the nearest $100).

B. Product Fees

At the beginning of FY 2005, the product fee was based on an estimate that 2,225 products would be subject to and pay product fees. By the end of FY 2005, FDA estimates that 2,390 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. Assuming that there will be about 40 waivers and reductions granted, FDA estimates that 2,350 products will qualify for product fees in FY 2005, after allowing for waivers and reductions, and will use this number for its FY 2006

estimate. Accordingly, the FY 2006 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($98,995,826) by the estimated 2,350 products for a FY 2006 product fee of $42,130 (rounded to the nearest $10).

VI. Fee Schedule for FY 2006

The fee rates for FY 2006 are set out in table 4 of this document.

TABLE 4.—FY 2006 FEE RATES

FEE CATEGORY	FEE RATES FOR FY 2006
Applications	
Requiring clinical data	$767,400
Not requiring clinical data	$383,700
Supplements requiring clinical data	$383,700
Establishments	$264,000
Products	$42,130

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2005. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee ID number on your check. Your payment can be mailed to: Food and Drug Administration, P.O. Box 360909, Mellon Client Service Center—rm. 670, 500 Ross St., Pittsburgh, PA 15251–6909.

If checks are to be sent by a courier, the courier can deliver the checks to: Food and Drug Administration (360909), Mellon Client Service Center—rm. 670; 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This Mellon Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 360909) is written on the check. The tax identification number of the Food and Drug Administration is 530 19 6965.

B. Establishment and Product Fees

By August 31, 2005, FDA will issue invoices for establishment and product fees for FY 2006 under the new Fee Schedule. Payment will be due on October 1, 2005. FDA will issue invoices in October 2006 for any products and establishments subject to fees for FY 2006 that qualify for fees after the August 2005 billing.

Dated: July 26, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15159 Filed 7–29–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4975–N–22]

Notice of Proposed Information Collection: Comment Request; Mortgagee Request for Extension of Time Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 30, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: JeniRuth Nix, Program Analyst, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension of Time Requirements.

OMB Control Number, if applicable: 2502–0436.

Description of the need for the information and proposed use: In the event of default, foreclosure, and conveyance requirements of an insured mortgage, the mortgagee is entitled to receive insurance benefits from the date of default to the date of insurance benefits. In the event of preservation and protection (P&P) requirements of the fiscal integrity of a conveyed property, the mortgagee is entitled to receive insurance benefits for the preservation of the property. HUD regulations require that the mortgagee take certain actions within specific time limitations. Failure to meet such limitations may result in curtailment of interest payments. Information collected here allows the Department to evaluate requests for extension of the regulatory time limits within which specific foreclosure processing and P&P steps must be taken.

Agency form numbers, if applicable: HUD–50012.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 4,504, number of respondents is 146, frequency of response is on occasion, the total number of responses is 28,150, and the estimated response time is 10 minutes.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 22, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E5–4079 Filed 7–29–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4962–C–02]

Notice of Funding Availability for Fiscal Year (FY) 2004 HOPE VI Main Street Grants; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability; Correction.

SUMMARY: On July 21, 2005, HUD published the Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2004 HOPE VI Main Street Grants. This notice announces several corrections to the NOFA.

DATES: The application submission date is September 2, 2005.

FOR FURTHER INFORMATION CONTACT: Lar Gnessin, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0614 extension 2676 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 21, 2005 (70 FR 42150), HUD published the Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2004 HOPE VI Main Street Grants Notice announcing the availability of approximately $5 million in funds to produce affordable housing in HUD-defined Main Street rejuvenations.

This Notice announces technical corrections to the NOFA. Specifically, HUD has determined that, because of the short time frame involved and the need to obligate this assistance before the end of the fiscal year, electronic applications will not be accepted. Applicants may only submit paper applications. Applications must be received on or before 5:15 p.m. on September 2, 2005 at the address stated in Section IV.F.1. of this NOFA. Regardless of the date the application was posted to the USPS or other mail carrier, applications received after 5:15 p.m. on September 2, 2005 at the address in IV.F.1. will be considered late and will not be eligible for funding. There is no grace period for mail delivery time.

Summary of Technical Corrections

On page 42150, in the Overview Information Section, paragraph E's reference to the Catalog of Federal Domestic Assistance (CFDA) Number is changed from 14–886 to 14.886. This change is necessary to correct a typographical error.

On page 42150, in the Overview Information Section, paragraph F is changed to direct applicants to refer to Section IV ("Application and Submission Information") of the HOPE VI Main Street NOFA for application requirements.

On page 42150, in the Overview Information Section, paragraph G is changed to reflect HUD's decision that only paper applications will be accepted. HUD understands that during the SuperNOFA application process, some eligible applicants may have had difficulty submitting their applications electronically. Additionally, the HOPE VI Main Street Grants program requires that available funds be obligated on or before September 30, 2005. This short time frame may not provide an acceptable period of time to resolve any problems that may arise with applications submitted electronically. Furthermore, the HOPE VI Main Street program's eligible applicants include Local Governments with populations of 50,000 or less; these eligible applicants, as a whole, may not have sufficient access to the Internet in the geographic locations in which the applicants are located. Therefore, in order to ensure that (1) applicants have no problems submitting applications; (2) applicants have an appropriate amount of time to submit applications; and (3) HUD has adequate time to review program applications and award funds, HUD has determined that only paper submissions may be submitted for the HOPE VI Main Street program.

On pages 42157 through 42164, Section IV, HUD, as discussed above, is substantially revising Section IV ("Application and Submission Information") to reflect HUD's decision that only paper applications be accepted.

On page 42169, in Section VII ("Agency Contacts") in the first column, a technical assistance contact person has been changed.

On pages 42170 through 42232, forms are appended to the HOPE VI Main Street NOFA. When submitting paper applications, applicants may include form HUD–2993 ("Acknowledgement of Application Receipt") as part of the application package. This form was not published with the July 21, 2005 NOFA. Thus, this form is added to the appended forms.

Accordingly, the Notice of Funding Availability for Fiscal Year (FY) 2004 HOPE VI Main Street Grants, published in the **Federal Register** on July 21, 2005 (70 FR 42150) is corrected as follows:

1. On page 42150, first column, in paragraph E, in the Section titled "Overview Information," remove 14–886 and replace it with 14.886.

2. On page 42150, first column, in paragraph F, in the Section titled "Overview Information," remove paragraph F.1. and replace it with "1. *Application Submission Date.* The application submission date and time are September 2, 2005 at 5:15 p.m. Eastern time. Applications will be considered late and ineligible to receive funding if not received on or before the application due date, regardless of the postmark date."

3. On page 42150, first column, in paragraph G, in the Section titled "Overview Information," remove paragraph G and replace it with "G. *Application Submission Requirements.* Applications for this NOFA will NOT be accepted electronically through *www.grants.gov.* Only paper applications will be accepted. See "Other Submission Requirements," in Section IV.F. of this NOFA."

4. On page 42157, beginning in the first column, remove Section IV ("Application and Submission Information") in its entirety and replace it with the following:

IV. Application and Submission Information

A. Addresses to Request Application Package

This section describes how you may obtain application forms, additional information about the General Section of this NOFA, and technical assistance.

1. Copies of this published NOFA and related application forms may be downloaded from the grants.gov Web site at *http://www.grants.gov/FIND,* HUD's Grants Administration Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm,* or HUD's HOPE VI Web site at *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/mainstreet/,* If you do not have Internet access and need to obtain a copy of this NOFA, you can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may call toll-free at (800) HUD–2209.

2. *Application Kits.* There are no application kits for HUD programs. All the information you need to apply will be in the NOFA and available at the above locations.

3. The published **Federal Register** document is the official document that HUD uses to evaluate applications. Therefore, if there is a discrepancy

between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *www.grants.gov,* the **Federal Register** publication prevails. Please be sure to review the application submission against the requirements in the **Federal Register** file of this NOFA.

B. Content and Form of Application Submission

1. *Number of Applications Permitted.* Each applicant may submit only one application.

2. *Joint Applications.* Joint applications are not permitted. However, the applicant may enter into subgrant agreements with procured developers, other partners, nonprofit organizations, state governments, or other local governments to perform the activities proposed under the application.

3. *General Format and Length of Application.*

a. General

(1) Signatures. Where applicant execution is required, the head of the Local Government, or his or her designee, must sign each form or certification that is required as part of the application, whether part of an attachment or a standard certification.

(2) The application should be packaged in a three-ring binder.

b. Page Layout

(1) Narrative pages must be double-spaced. Single-spaced pages will be counted as two pages.

(2) Narrative information furnished in columns must be double spaced. Pages that include single spaced columns will be counted as two pages.

(3) Use 8½ x 11-inch paper, one side only. Only the Main Street area map may be submitted on an 11 by 17-inch sheet of paper. Larger pages will be counted as two pages.

(4) All four page margins should be a minimum of ½ inch. If any margin is smaller than ½ inch the page will be counted as two pages.

(5) The font must be Times New Roman 12-point.

(6) If a narrative section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each application Section with the appropriate tab listed in section IV.B.4.a. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more pages of text on one piece of paper. Shrunken pages will be counted as multiple pages.

c. Page Count

(1) The maximum total length of all narrative sections, including the Executive Summary and the Rating Factor responses, is 15 pages.

(2) The maximum length of attachments is as follows:

(a) For the Program Schedule, a maximum of one page;

(b) For the Map of the Main Street Area, one page. The map must be scalable.

(c) Main Street Rejuvenation Master Plan (Master Plan), a maximum of 20 pages. In order to meet the size limitation, the applicant may submit only the portions of the Master Plan that pertain to subjects that are listed in Section III of this NOFA, under "Thresholds" and "Program Requirements," and Section V of this NOFA. If those portions of the Master Plan exceed 20 pages, the applicant may summarize information that is included in those portions of the Master Plan. By applying for this NOFA, the applicant is certifying that submitted summaries of the Master Plan accurately represent the original Master Plan;

(3) HUD forms will not be counted toward the attachment page total;

(4) Text submitted at the request of HUD to correct technical deficiencies will not be counted in the page limit.

(5) Any pages in excess of the above limitations will not be reviewed. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

4. *Application Content.* The following is a list of narrative exhibits and forms that are required as part of the application. Narrative exhibits and forms should be included in the application in the order listed below. Non-submission of these items may lower your rating score or make you ineligible for award under this NOFA. Review the threshold requirements in Section III.C. and mandatory documentation requirements in Section IV.B. of this NOFA to ascertain the affects of non-submission. HUD forms required by this NOFA can be obtained on the Internet at *http://www.grants.gov, http://www.hud.gov/offices/adm/grants/otherhud.cfm,* or *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/mainstreet/.*

a. List of Mandatory Application Sections and Related Documents

(1) Summary Information:

(a) Section A: Application for Federal Assistance, form SF–424;

(b) Section B: Application Table of Contents;

(c) Section C: Executive Summary;

(2) Rating Factor Responses:

(a) Section D: Rating Factor 1, Capacity, Narrative Response;

(b) Section E: Rating Factor 2, Need for Affordable Housing, Narrative Response;

(c) Section F: Rating Factor 3, Appropriateness of Main Street Master Plan;

(d) Section G: Rating Factor 4, Appropriateness of the Main Street Affordable Housing Project;

(e) Section H: Rating Factor 5, Program Administration and Fiscal Management;

(f) Section I: Rating Factor 6, Incentive Criteria on Regulatory Barrier Removal; and

(g) Section J: Rating Factor 7, RC/EZ/EC–IIs.

(3) Attachments:

(a) Section K: HOPE VI Main Street Application Data Sheet, form HUD–52861;

(b) Section L: Program Schedule;

(c) Section M: Map of Main Street Area;

(d) Section N: Main Street Rejuvenation Master Plan;

(e) Section O: HOPE VI Budget, form HUD–52825A;

(f) Section P: 5-Year Cash Flow Proforma;

(g) Section Q: America's Affordable Communities Initiative, form HUD–27300, and related documentation;

(h) Section R: Logic Model, form HUD–96010;

(i) Section S: Race and Ethnic Data Reporting, form HUD–27061;

(j) Section T: Applicant/Recipient Disclosure/Update Report, form HUD–2880, if applicable;

(k) Section U: Certification of Consistency with the RC/EZ/EC–IIs Strategic Plan, form HUD–2990, if applicable; and

(l) Section V: Disclosure of Lobbying Activities, Standard Form LLL, if applicable.

5. *Documentation Information.*

a. *Executive Summary.*

(1) Provide an Executive Summary, not to exceed two pages. Describe your affordable housing plan. State whether you have procured a developer or whether you will act as your own developer. Briefly describe:

(a) The type of housing, e.g., walk-up above retail space, detached house, etc.;

(b) The number of units and buildings;

(c) The specific plans for the Main Street Area that surrounds the Main

Street Affordable Housing Project. Include income mix, basic features (such as restoration of streets), and a general description of mixed-use and non-housing Main Street rejuvenation components.

(d) The number of homeownership units in your proposal, if any;

(e) The amount of HOPE VI funds you are requesting. See Section IV.E. of this NOFA for funding limits; and

(f) A list of major non-HOPE VI funding sources for the Main Street Affordable Housing Project, if any.

b. *HOPE VI Main Street Application Data Sheet, form HUD–52861.*

(1) This form consists of several Excel worksheets. Instructions for filling in the data worksheets are located on the left-hand worksheet, with the tab name, "Instructions." The worksheets should be filled out from the left-most tab toward the right. In this way, the information that the applicant provides will automatically be inserted to the right into other worksheets as needed.

(2) List of Match and Leverage Resources. To meet the leverage resources threshold stated in Section III.C.1 of this NOFA, the applicant must provide a leverage amount equal to or greater than the applicant's requested grant amount. Allowable resources may be cash contributions or contributions of in-kind services. For each of the applicant's leverage resources, the applicant's list of leverage resources must include:

(a) The name of the entity providing the resource;

(b) The name of a contact for the entity providing the resource that is familiar with the contribution toward this application;

(c) The telephone number of a contact for the resource who is familiar with the contribution toward this application;

(d) The leverage amount;

(e) Whether the leverage amount is cash or in-kind services; and

(f) The period in which the leverage resource was expended or will be received, *e.g.*, expended during 2003, or, for a future leverage resource, the period in which it will be furnished, *e.g.*, over the next two years.

c. *Program Schedule.* The application must include a program schedule for the applicant's Project.

(1) The schedule must include, at a minimum:

(a) Grant Agreement Execution Date. Assume that the Grant Agreement Execution Date will be within 90 days after the grant award notification date;

(b) Date of closing of financing of the first phase, in months after the grant award date;

(c) Date of the start of construction of the first housing unit, in months after the grant award date; and

(d) Date of the completion of construction of the last housing unit, in months after the grant award date.

(2) The Program Schedule must reflect the Reasonable Time-Frame and Development Proposal time requirements stated in Section VI.B.1. of this NOFA. The Program Schedule must also state that grant activities will be completed within the 30-month term of the grant.

d. *Map of Main Street Area.* The drawing must:

(1) Show the boundaries of a Main Street Area. The boundaries may include streets, highways, railroad tracks, etc., and natural boundaries such as streams, hills, and ravines, etc. and

(2) Denote each housing site that is included in the applicant's Main Street Affordable Housing Project.

e. *Main Street Rejuvenation Master Plan.* The applicant's Main Street Rejuvenation Master Plan must address, at a minimum, the eight subjects listed in "Main Street Rejuvenation Master Plan," in Section I.D.13. of this NOFA. The Master Plan must be as it existed on or before the application submission date of this NOFA. It is not necessary to include a market analysis for affordable housing that is needed in the Main Street Area or applications to the Historic Registry or list of Historic Districts. The applicant may submit only the portions of the Master Plan that pertain to subjects that are listed in Section III of this NOFA, under "Thresholds," "Program Requirements," and Section V of this NOFA. If those portions of the Master Plan exceed 20 pages, the applicant may summarize information that is included in those portions of the Master Plan. By applying for this NOFA, the applicant is certifying that submitted summaries of the Master Plan accurately represent the original Master Plan. See Section IV.B.6. of this NOFA for certifications that the applicant is making when the applicant applies for funds from this NOFA.

f. *Cash Flow Proforma.* The applicant must include a five-year estimate of project income, expenses, and cash flow ("proforma") that shows that the project will be financially viable over the long term. In the proforma, the applicant should assume that the initial occupancy period is a minimum of two years. Note that initial funding of reserves with grant funds is NOT an allowable use of funds from this NOFA. Reserves may be funded through leverage resources. Viability must be shown for the entire project, i.e., all buildings that include affordable housing units that are partially or wholly funded with HOPE VI funds. The applicant may include one proforma for the entire project, or several proformas, broken out for the various portions of the project, as fits the circumstances best. For example, separate proformas may include viability documentation for:

(1) All buildings together;

(2) Separately for each building in the project; or

(3) Separately for each owner entity in the project.

g. *HOPE VI Budget.* Enter the amount you are requesting through this NOFA. In "Part I: Summary," it is not necessary to fill in the columns entitled, "Previous Authorized Amounts of Funds in LOCCS," "Changes Requested in this Revision," and "HUD-Approved Total Authorized Amount of Funds in LOCCS." In "Part II: Supporting Pages," it is necessary only to fill in columns 2 and 3.

h. *Logic Model.* It is not necessary to fill in columns 6, 7, 8 and 9. This information will be collected at the end of the grant term. See Section VI.C.3. of this NOFA.

i. *Appropriateness of Application.* Section 24(e)(1) of the 1937 Act requires that the application demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. An example of an alternative proposal would be proposing a range of resident incomes, housing types (rental, homeownership, market-rate, townhouse, detached house, etc.), or costs which cannot be supported by the existing neighborhood demographics. Briefly, contrast your proposal and an alternative, and include the discussion in the executive summary.

6. *Certifications.* By signing the SF–424, the applicant certifies to the following:

a. The Main Street Rejuvenation Master Plan that is included as part of this application existed for three years prior to the application submission date, and is mentioned in the applicant's Consolidated Plan, if one exists;

b. Prior to the publication date of this NOFA, the Main Street Affordable Housing Project was, and continues to be, included in the Main Street Rejuvenation Master Plan;

c. Submitted summaries of the Master Plan accurately represent the original Master Plan;

d. The applicant or its developer entity recognized by the applicant has site control of all properties where affordable housing will be developed;

e. All project sites have zoning that allows for residential development;

f. All Match resources included in the application are "firmly committed." See the definition of "firmly committed" in Section I.D. of this NOFA;

g. All leverage resources included in the application are "firmly committed." See the definition of "firmly committed" in Section I.D. of this NOFA;

h. Historic preservation requirements in Section 106 of the National Historic Preservation Act of 1966 (NHPA) will be fulfilled, where applicable.

i. Environmental requirements stated in the NOFA will be fulfilled;

j. Building standards stated in the NOFA will be fulfilled;

k. Relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) will be fulfilled;

l. Fair Housing requirements will be followed and fulfilled; and

m. The "Certification of Consistency with RC/EZ/EC Strategic Plan" (form HUD–2990), if included in the application, applies.

7. *Rating Factor Format.* The narrative portion of the application is the executive summary and the applicant's response to the rating factors. To ensure proper credit for information applicable to each rating factor, the applicant should include application Section references, as listed in Section IV.B.4.a. of this NOFA, to supporting documentation and language, as appropriate for rating factor responses. The applicant's rating factor responses should be as descriptive as possible, ensuring that every requested item is addressed. The applicant should make sure to include all information requested in the instructions of this NOFA. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

8. Rating Factor Documentation

a. References to the Main Street Rejuvenation Master Plan.

(1) The purpose of referencing the Main Street Rejuvenation Master Plan is to decrease the amount of rating factor narrative that the applicant finds necessary to achieve its maximum rating. It is NOT necessary to repeat in the rating factor narratives the information that the applicant included in its Master Plan.

(2) Each reference to the Master Plan should be specific, including the page number of the Master Plan where the information can be found and a reference to identify its location on the page. More than one specific reference to the Master Plan may be included for any one subject or rating factor narrative.

b. *Team Experience and Key Personnel Knowledge.* Documentation that demonstrates knowledge and experience may include, but is not limited to:

(1) A list and short description of affordable housing projects that the members of the applicant's team have completed;

(2) A list and short description of contracts or grants completed by the members of the applicant's team for similar housing development or services;

(3) Third-party evaluation reports;

(4) Résumés of key personnel; and

(5) Other documentation showing knowledge and experience of affordable housing development or construction.

c. *Need for Affordable Housing.* Documentation of need for affordable housing is based on a comparison of HUD's Fair Market Rent (FMR) for the applicant's Primary Metropolitan Statistical Area/Metropolitan Statistical Area ("PMSA/MSA") or nonmetropolitan county/parish and the maximum amount of rent that a low-income family living in that PMSA/MSA or nonmetropolitan county/parish can afford to pay.

(1) PMSA/MSAs and nonmetropolitan counties are as listed in HUD's document titled "FY 2004 State List of Counties (and New England Towns) Identified by Metropolitan and Nonmetropolitan Status" at *http://www.huduser.org/datasets/il/IL04/Definitions04.doc.*

(2) The FMRs are listed at *http://www.huduser.org/intercept.asp?loc=/Datasets/FMR/FMR2005F/Final_FY2005_SCHEDULEB1.pdf*

(3) The maximum, affordable low-income rent is based on HUD's Income Limits, as listed at *http://www.huduser.org/datasets/il/IL04/Section8_IncomeLimits_2004.doc* for low-income families. The maximum, affordable low-income rent is equal to the Median Family Income for low-income families, divided by 12, divided further by 0.3 (30 percent).

(4) In performing the comparison, the applicant must use the 4-person family size and the 3-bedroom unit size. The application must include the income limit and maximum, affordable low-income rent for a 4-person family, and the Fair Market Rent for a 3-bedroom unit.

d. *Program Administration and Fiscal Management.* Documentation that demonstrates program administration and fiscal management MUST include:

(1) A description of the procurement system structure that the applicant has in place, including internal controls;

(2) A description of the fiscal management structure that the applicant has in place, including fiscal controls and internal controls;

(3) A summary of the results of the last available annual external, independent audit, including findings, if any;

(4) A list of any findings issued or material weaknesses found by HUD or other federal or state agencies. A description of how the applicant addressed the findings and/or weaknesses. If no findings or material weaknesses were exposed or existed on or before the publication date of this NOFA, include a statement to that effect in the narrative; and

(5) A description of the applicant's management control structure, including management roles and responsibilities and evidence that the applicant's management is results-oriented, *e.g.*, existing production, rental, and maintenance goals.

e. *Incentive Criteria on Regulatory Barrier Removal.*

(1) The applicant must include the completed form HUD–27300 in the application, along with background documentation where required by the form.

f. *RC/EZ/EC–IIs.*

(1) To receive the two bonus points for performing the NOFA activities in a RC/EZ/EC–II area, the applicant must include the "Certification of Consistency with RC/EZ/EC Strategic Plan" (form HUD–2990) in the application, signed by the authorized official of the RC/EZ/EC.

C. Submission Dates and Times

1. *Application submission date and time.* The application submission date is September 2, 2005 at 5:15 p.m. See Section IV.F. of this NOFA for the submission address.

2. *Acknowledgement of Application Receipt.* If you wish to receive written acknowledgement of HUD's receipt of the application, the Acknowledgment of Application Receipt, form HUD–2993, should be included in the front of the application. After receipt, HUD will return the form to you.

D. Intergovernmental Review

1. *Executive Order 12372, Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct

federal development. HUD implementing regulations are published in 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOCs) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If the applicant's state has a SPOC, the applicant should contact it to see if it is interested in reviewing the application prior to submission to HUD. The applicant should allow ample time for this review process when developing and submitting the applications. If the applicant's state does not have a SPOC, the applicant may send applications directly to HUD.

E. Funding Restrictions

1. Grant funds shall be used only to provide assistance to carry out eligible affordable housing activities, as stated in Section I.E. of this NOFA.

2. *Non-allowable Costs and Activities.* Although leverage resources may be used to fund the following activities or expenses, grant funds from this NOFA CANNOT be used for:

a. Total demolition of a building (including where a building foundation is retained);

b. Sale or lease of the Main Street Affordable Housing Project site (excluding lease or transfer of title for the purposes of obtaining tax credits, provided that the recipient owner entity of the title or lease includes the applicant);

c. Funding of reserves;

d. Payment of administrative costs of the applicant;

e. Payment of legal fees;

f. Development of public housing replacement units (defined as units that replace disposed of or demolished public housing) or use as Housing Choice Vouchers;

g. Transitional security activities;

h. Main Street technical assistance consultants or contracts; and

i. Costs incurred prior to grant award, including the cost of application preparation.

3. *Cost Controls.*

a. The total amount of HOPE VI funds expended shall not exceed the Total Development Cost ("TDC"), as published by HUD in NOTICE PIH 2003–8 (HA), "Public Housing Development Cost Limits," for the number of affordable housing units that will be developed through this NOFA. The TDC limits can be found at *http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=PIHN&s1=2003-8&op1=AND&l=100&SECT1=TXT_HITS&SECT5=HEHB&u=./hudclips.cgi&p=1&r=2&f=G.*

b. Cost Control Safe Harbors apply. Safe Harbors may be found at *http://www.hud.gov/utilities/intercept.cfm?/offices/pih/programs/ph/hope6/grants/admin/safe_harbor.pdf.*

4. *Community and Supportive Services ("CSS").* Furnishing CSS to residents is voluntary, except for homeownership counseling when the application includes development of homeownership units. If the applicant chooses to furnish CSS, expenditures are limited to 15 percent of the grant amount.

5. *Statutory time limit for award, obligation, and expenditure.*

a. The estimated award date will be September 30, 2005.

b. Funds available through this NOFA must be obligated on or before September 30, 2005.

c. In accordance with 31 U.S.C. 1552 (Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 935; Pub. L. 101–510, div. A, title XIV, Sec. 1405(a)(1), Nov. 5, 1990, 104 Stat. 1676.), all HOPE VI funds that were appropriated in FY 2004 must be expended by September 30, 2010. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

6. *Withdrawal of Funding.* If a grantee under this NOFA does not proceed within a reasonable time frame, HUD shall withdraw any grant amounts that have not been obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for assistance.

7. *Transfer of Funds.* HUD has the discretion to transfer funds available through this NOFA to any other HOPE VI program.

8. *Limitation on Eligible Expenditures.* Expenditures on services, equipment, and physical improvements must directly relate to project activities allowed under this NOFA.

9. *Pre-Award Activities.* Award funds may not be used to reimburse pre-award expenses.

F. Other Submission Requirements

1. *Address for Submitting Applications.* Send the completed application to: Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000.

Please make sure that you note the room number. The correct room number is very important in ensuring that your application is properly accepted and not misdirected.

2. *Wrong Address.* Applications mailed to the wrong location or office designated for receipt of the application, which result in the designated office not receiving your application in accordance with the requirements for timely submission, will result in your application being considered late and will not receive funding consideration. HUD will not be responsible for directing packages to the appropriate office(s).

3. *Submission via Overnight Mail.* Paper applications must be submitted, in their entirety, via FedEx, United Postal Service (UPS) or United States Postal Service (USPS) Express Mail. No other mail carriers or delivery services are allowed into HUD Headquarters and no applications will be accepted from other mail carriers or delivery services HUD will not accept hand delivery of applications.

4. *Timely Receipt of Applications.* Applications must be received on or before 5:15 p.m. on September 2, 2005 at the address stated in Section IV.F.1. of this NOFA. Regardless of the date the application was posted to the USPS or other mail carrier, applications received after 5:15 p.m. on September 2, 2005 at the address in IV.F.1. will be considered late and will not be eligible for funding. There is no grace period for mail delivery time. Note that this requirement differs from, and takes precedence over, the General Section. The applicant should post the application early enough to allow sufficient time for delivery before the submission date and time. Note that USPS Express Mail does not always deliver within the committed time. It has been HUD's experience that Express Mail delivery may take up to five days.

5. *Late applications.* Late applications will not receive funding consideration. Applications sent to HUD through FedEx, United Parcel Service (UPS) or the United States Postal Service (USPS) Express Mail will be considered late and ineligible to receive funding if not received on or before the application due date, regardless of the postmark date. HUD will not be responsible for directing or forwarding applications to the appropriate location. Applicants should pay close attention to these submission and timely receipt instructions as they can make a difference in whether HUD will accept your application for funding consideration.

6. *Proof of Timely Submission.* Proof of timely submission for all applications, regardless of delivery method, shall be the date and time recorded by HUD's Grant Administrator in his or her application receipt log.

7. *No Facsimiles or Videos.* HUD will not accept for review, evaluation, or funding, any entire application sent by facsimile (fax). Minor changes or corrections, or other materials received on or before the application submission date will be accepted and made part of the application. Facsimile corrections to technical deficiencies will be accepted. Also, videos submitted as part of an application will not be viewed.

8. *DUNS Requirement.* All applicants applying for funding, including renewal funding, must have a Dun and Bradstreet Universal Data Numbering System (DUNS) number. The DUNS number must be included in the data entry field labeled "Organizational Duns" on the form SF–424. Instructions for obtaining a DUNS number can be found at either of the following Web sites: *www.hud.gov/offices/adm/grants/duns.cfm or www.grants.gov/GetStarted.*

9. *General Section References.* The following sub-sections of Section IV of the General Section are hereby incorporated by reference:

a. Addresses to Request Application Package;

b. Application Kits;

c. Guidebook and Further Information.

d. Forms. The following HUD standard forms are not required as part of the application for this NOFA:

(1) Grant Application Detailed Budget (HUD–424–CB);

(2) Grant Application Detailed Budget Worksheet (HUD–424–CBW);

e. Certifications and Assurances.

5. On page 42169, in the first column, replace the phrase "Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC, 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers)." with the phrase "Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC, 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers)."

6. Beginning on page 42170, at which forms are appended to the HOPE VI Main Street NOFA, add form HUD–2993 ("Acknowledgment of Application Receipt").

Dated: July 26, 2005.

Paula O. Blunt,

General Deputy Assistant, Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

[FR Doc. 05–15171 Filed 7–29–05; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–921–1410–BK–P]

Notice for Publication, Filing of Plat of Survey; AK

1. The plats of survey of the following described lands were officially filed in the Alaska State Office, Anchorage, Alaska, on the date indicated.

A plat representing the survey of a portion of the south boundary and a portion of the subdivisional lines of section section 36 of Township 39 South, Range 59 East, Copper River Meridian, Alaska, was accepted May 17, 2005, and was officially filed July 8, 2005.

A plat representing the dependent resurvey of a portion of the line between sections 2 and 3 and a portion of U.S. Survey No. 945 and the survey of a portion of sections 1, 2, 11, and 12, partition lines for accreted lands adjoining section 3 and U.S. Survey Nos. 944 and 945, and a portion of the meanders, and an informational traverse of the present day line of mean high tide of accreted lands adjoining U.S. Survey Nos. 944 and 945, of Township 40 South, Range 59 East, Copper River Meridian, Alaska, was accepted May 17, 2005, and was officially filed July 8, 2005.

These plats were prepared at the request of the National Park Service, Alaska Regional Office.

2. These plats will immediately become the basic record for describing the land for all authorized purposes. This survey has been placed in the open files in the Alaska State Office and is available to the public as a matter of information.

3. All inquires relating to these lands should be sent to the Alaska State Office, Bureau of Land Management, Division of Cadastral Surveys, 222 West Seventh Avenue #13, Anchorage, Alaska 99513–7599; 907–267–1403.

Daniel L. Johnson,

Chief, Branch of Field Surveys.

[FR Doc. 05–15117 Filed 7–29–05; 8:45 am]

BILLING CODE 1410–BK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–921–1410–BK–P]

Notice for Publication, Filing of Plat of Survey; AK

1. The plats of survey of the following described lands were officially filed in the Alaska State Office, Anchorage, Alaska, on the date indicated.

A plat representing the corrective resurvey of a portion of the subdivisional lines and a portion of the subdivision of section lines of Township 17 North, Range 3 East, Seward Meridian, Alaska, was accepted June 29, 2005, and was officially filed July 8, 2005.

This plat was prepared at the request of the State of Alaska, Department of Natural Resources.

2. This plat will immediately become the basic record for describing the land for all authorized purposes. This survey has been placed in the open files in the Alaska State Office and is available to the public as a matter of information.

3. All inquires relating to these lands should be sent to the Alaska State Office, Bureau of Land Management, Division of Cadastral Survey, 222 West Seventh Avenue #13, Anchorage, Alaska 99513–7599; 907–267–1403.

Daniel L. Johnson,

Chief, Branch of Field Surveys.

[FR Doc. 05–15118 Filed 7–29–05; 8:45 am]

BILLING CODE 1410–BK–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: identification markings placed on firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for "sixty days" until September 30, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact David Chipman, Chief, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification Markings Placed on Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Each licensed firearms manufacturer or licensed firearm importer must legibly identify each firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing on the frame or receiver an individual serial number. Also, ATF requires minimum height and depth requirements for identification markings placed on firearms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,962 respondents will take 5 seconds to mark the firearm.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,500 annual total burden hours associated with this collection.

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: July 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–15122 Filed 7–29–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multi-Terabyte Tape Storage

Notice is hereby given that, on June 16, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* ("the Act"), Multi-Terabyte Tape Storage ("MTTS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accutronics, Inc., Littleton, CO has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MTTS intends to file additional written notification disclosing all changes in membership.

On October 29, 2002, MTTS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2002 (67 FR 72429).

The last notification was filed with the Department on September 30, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 2003 (68 FR 61830).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–15114 Filed 7–29–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Traffic Audit Bureau for Media Measurement, Inc.

Notice is hereby given that, on July 7, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Traffic Audit Bureau for Media Measurement, Inc. ("TAB") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Traffic Audit Bureau for Media Measurement, Inc., New York, NY. The nature and scope of TAB's standards development activities are: to establish standard practices with respect to the measurement and evaluation of all out-of-home media advertising to the extent that such practices are technically valid and financially feasible; to supervise and direct practices in connection with the collection, recording, authentication and verification of traffic and other relevant data related to out-of-home media advertising; to prepare and disseminate standardized factual statements setting forth the circulation value and/or proof of performance of out-of-home media advertising; and to perform such other acts and services as will further the interests of advertisers, advertising agencies, operators of out-of-home media plants and all other interested in information having to do with the out-of-home media industry.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–15113 Filed 7–29–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 14, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Atrenta, Inc., San Jose, CA; Certess, Voreppe, France; Oki Electric Industry Co., Ltd., Tokyo, Japan; Prosilog SA, Clergy-Prefecture, France; Super H (UK), Ltd., Almondsbury, Bristol, United Kingdom; SynTest Technologies, Inc., Sunnyvale, CA; and TTChip Entwicklungsges.m.b.H., Vienna, Austria have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 6, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2005 (70 FR 251112).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–15115 Filed 7–29–05; 8:45 am]

BILLING CODE 4410–11–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: Alien's

Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

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 80, page 21812 on April 27, 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 August 31, 2005. 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Alien's Change of Address Form: 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: Form EOIR 33/BIA, 33/IC. 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: An individual appearing before the Immigration Court or the Board of Immigration Appeals. Other: None. Abstract: The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to determine where to send notices of the next administrative action or of any decisions in an alien's case.

(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 15,000 respondents will complete the form annually with an average of 3 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 750 total burden hours associated with this collection annually.

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: July 27, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–15139 Filed 7–29–05; 8:45 am]

BILLING CODE 4410–30–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Director, Office of Administration, 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 September 26, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (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 Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection 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 record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 25, 2005.

June D. W. King,

Director, Office of Administration, National Mediation Board.

Application for Investigation of Representation Dispute

Type of Review: Extension.

Title: Application for Investigation of Representation Dispute.

OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.00.

1. *Abstract:* When a dispute arises among a carrier's employees as to who will be their bargaining representative, the National Mediation Board (NMB) is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the NMB has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2, provides that applications for the services of the NMB under Section 2, Ninth, to investigate representation disputes may be made on printed forms secured from the NMB's Office of Legal Affairs or on the Internet at *http://www.nmb.gov/representation/rapply.html*. The application requires the following information: The name of the carrier involved; the name or description of the craft or class involved; the name of the petitioning organization or individual; the name of the organization currently representing the employees, if any; the names of any other organizations or representatives involved in the dispute; and the estimated number of employees in the craft or class involved. This basic information is essential in providing the NMB with the details of the dispute so that it can determine what resources will be required to conduct an investigation.

2. The application form provides necessary information to the NMB so that it can determine the amount of staff and resources required to conduct an investigation and fulfill its statutory responsibilities. Without this information, the NMB would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

3. There is no improved technological method for obtaining this information. The burden on the parties is minimal in completing the "Application for Investigation of Representation Dispute."

4. There is no duplication in obtaining this information.

5. Rarely are representation elections conducted for small businesses. Carriers/employers are not permitted to request our services regarding representation investigations. The labor organizations, which are the typical requesters, are national in scope and would not qualify as small businesses. Even in situations where the invocation comes from a small labor organization, we believe the burden in completing the application form is minimal and that no reduction in burden could be made.

6. The NMB is required by Section 2, Ninth, to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative. The NMB has no ability to control the frequency, technical, or legal obstacles, which would reduce the burden.

7. The information requested by the NMB is consistent with the general information collection guidelines of CFR 1320.6. The NMB has no ability to control the data provided or timing of the invocation. The burden on the parties is minimal in completing the "Application for Inyestigation of Representation Dispute."

8. No payments or gifts have been provided by the NMB to any respondents of the form.

9. There are no questions of a sensitive nature on the form.

10. The total time burden on respondents is 17.00 hours annually—this is the time required to collect information. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information.

Number of respondents per year: 68.

Estimated time per respondent: 15 minutes.

Total Burden hours per year: 17. (68 × .25).

11. The total collection and mail cost burden on respondents is estimated at $365.16 annually ($340.00 time cost burden + $25.16 mail cost burden).

a. The respondents will not incur any capital costs or start up costs for this collection.

b. Cost burden on respondents—detail:

The total time burden annual cost is $340.00.

Time Burden Basis: The total hourly burden per year, upon respondents, is 17.

Staff cost = $340.00.

$20.00 per hour—based on mid level clerical salary.

$20.00 × 17 hours per year = $340.00.

We are estimating that a mid-level clerical person, with an average salary of $20.00 per hour, will be completing the "Application for Investigation of Representation Dispute" form. The total burden is estimated at 17 hours, therefore, the total time burden cost is estimated at $340.00 per year.

The total annual mailing cost to respondents is $25.16.

Number of applications mailed by respondents per year: 68.

Total estimated cost: $25.16. (68 × .37 stamp).

The collection of this information is not mandatory; it is a voluntary request from airline and railroad carrier employees seeking to invoke an investigation of a representation dispute. After consulting with a sample of people involved with the collection of this information, the time to complete this information collection is estimated to average 15 minutes per response, including gathering the data needed and completion and review of the information. However, the estimated hour burden costs of the respondents may vary due to the complexity of the specific question in dispute. The application form is available from the NMB's Office of Legal Affairs and is also available on the Internet at *http://www.nmb.gov/representation/rapply.html*.

12. The total annualized Federal cost is $427.86 This includes the costs of printing and mailing the forms upon request of the parties. The completed applications are maintained by the Office of Legal Affairs.

a. Printing cost: $80.00.

b. Mailing costs: $7.86.

Basis (mail cost): Forms are requested approximately 3 times per year and it takes 5 minutes to prepare the form for mail.

Postage cost = $1.11.

3 (times per year) × .37 (cost of postage).

Staff cost = $6.75.

$.45 per minute (GS 9/10 $56,371 = $27.01 per hr. ÷ 60).

$.45 × 5 minutes per mailing = $2.25.

$2.25 × 3 times per year = $6.75.

Total Mailing Costs = $7.86.

13. Item 13—no change in annual reporting and recordkeeping hour burden.

14. The information collected by the application will not be published.

15. The NMB will display the OMB expiration date on the form.

18.

19 (c)—the form does not reduce the burden on small entities; however, the burden is minimized and voluntary.

19 (f)—the form does not indicate the retention period for recordkeeping requirements.

19 (i)—the form is not part of a statistical survey.

Requests for copies of the proposed information collection request may be accessed from *http://www.nmb.gov* or

should be addressed to Denise Murdock, NMB, 1301 K Street, NW., Suite 250 E, Washington, DC 20005 or addressed to the e-mail address *murdock@nmb.gov* or faxed to 202–692–5081. 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 June D. W. King at 202–692–5010 or via Internet address *king@nmb.gov*. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–15100 Filed 7–29–05; 8:45 am]

BILLING CODE 7550–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board and Its Subdivisions; Meetings

Date and Time: August 10–11, 2005.

August 10, 2005 7:30 a.m.–5 p.m.

Sessions:

7:30 a.m.–8:30 a.m.—Open.
8:30 a.m.–9 a.m.—Open.
8:30 a.m.–10:30 a.m.—Open.
10:30 a.m.–12:30 p.m.—Open.
12:45 p.m.–1 p.m.—Open.
1 p.m.–1:30 p.m.—Closed.
1:30 p.m.–2:15 p.m.—Open.
2:15 p.m.–3:30 p.m.—Closed.
3:30 p.m.–5 p.m.—Open.

August 11, 2005 8 a.m.–3:30 p.m.

Sessions:

8 a.m.–8:30 a.m.—Open.
8:30 a.m.–10 a.m.—Open.
10 a.m.–10:30 a.m.—Closed.
10:30 a.m.–11 a.m.—Open.
11 a.m.–12 noon—Closed.
12:30 p.m.–12:45 p.m.—Executive Closed.
12:45 p.m.–1 p.m.—Closed.
1 p.m.–3:30 p.m.—Open.

Place: National Science Foundation, 4201 Wilson Blvd, Rooms 1235 and 1295, Arlington, VA 22230.

Public Meeting Attendance: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

Contact Information: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Office: (703) 292–7000.

Status: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

Matters To Be Considered:

Wednesday, August 10, 2005

Open:

Committee on Programs & Plans Subcommittee on Polar Issues (7:30 a.m.–8:30 a.m.) Room 1235

- Chair's Remarks and Approval of Minutes
- OPP Director's Report
- South Pole Station Status Report
- OPP Advisory Committee Study of Antarctic Resupply Options
- Polar Icebreaker Availability
- Preparations for the International Polar Year

Committee on Programs & Plans Task Force on Transformative Research (8:30 a.m.–9 a.m.) Room 1295

- Approval of Minutes
- Update on Workshop: August 12, 2005 at NSF
- Discussion on possible Future Workshop Themes, Locations, and Dates

Education & Human Resources Subcommittee on S&E Indicators (8:30 a.m.–10:30 a.m.) Room 1235

- Approval of Minutes
- Discussion of Orange Book
- Discussion of Draft Overview chapter
- Science and Engineering Indicators 2006 cover
- Discussion of Draft Companion Piece
- Contractor Presentation on Indicators

Committee on Education & Human Resources (10:30 a.m.–12:30 p.m.) Room 1235

- Approval of Minutes
- NSF Staff Presentations
- Update on Math and Science Partnerships Program
- NSF Integration of Research and education
- NSB items
- House Roundtable on the S&T Workforce
- Innovation Summit
- NSB Commission on Education
- NSB/EHR Committee's Contribution to Board's Vision for NSF
- Subcommittee on Science and Engineering Indicators
- Update on Engineering Education Workshop

Executive Committee (12:45 p.m.–1 p.m.) Room 1235

- Approval of Minutes
- Updates or New Business from Committee Members

Joint Session: Committee on Strategy and Budget and Committee on Programs and Plans (1:30 p.m.–2:15 p.m.) Room 1235

- Centers and the NSF Portfolio
- Funding Rates, Award Size and Duration

Committee on Programs & Plans (3:30 p.m.–5 p.m.) Room 1235

- Approval of Minutes
- Vision Task Force
- Status of International Science Effort
- Status Reports
- Long-lived Digital Data Collections
- Transformative Research Task Force
- Subcommittee on Polar Issues
- Process for Sending Information & Actions to CPP & NSB
- Major Research Facilities: Status of Facility Plan and Guide

Closed

Executive Committee (1 p.m.–1:30 p.m.) Room 1235

- Candidate Sites for NSB Retreat/ Off-Site Visit
- Director's Items: Personnel Matters and Future Budgets

Committee on Programs & Plans (2:15 p.m.–3:30 p.m.) Room 1235

- Action Items
- Rare Symmetry Violating Process (RSVP)
- Maize Genome Sequencing
- Information Items
- ALMA Update
- Deep Underground Science and Engineering Laboratory

Thursday, August 11, 2005

Open

Committee on Programs & Plans (8 a.m.–8:30 a.m.) Room 1235

- Cyberinfrastructure Vision

Committee on Audit & Oversight (8:30 a.m.–10 a.m.) Room 1235

- Approval of Minutes
- Report by NSF Advisory Committee on GPRA Performance Assessment
- Discussion of NSF Vision Document: NSB Roles and Responsibilities
- Discussion of Draft Report of NSF Merit Review System Review
- NSB Policy Statement on Respective Roles of the OIG and NSF Management in the Pursuit and Settlement of Administrative Investigatory Matters
- Status of Financial Audit Procurement
- CFO Update on Plan To Address Reportable Conditions of FY 2004 Audit

Committee on Strategy and Budget (10:30 a.m.–11 a.m.) Room 1235

- Chair's Remarks and Approval of Minutes
- Discussion of Committee Input to Vision Task Force
- Status of FY 2006 Budget Request to Congress

Closed Session

Committee on Audit & Oversight (10 a.m.–10:30 a.m.) Room 1235

- OIG Budget
- Pending Investigations

Committee on Strategy & Budget (11 a.m.–12 noon) Room 1235

- Approval of Minutes

- Discussion of FY 2007 Budget Submission to OMB
- Recommendations for FY 2007 Budget Submission

Plenary Session of the Board (12:30 p.m.–1 p.m.)

Executive Closed Session (12:30 p.m.–12:45 p.m.) Room 1235

- Approval of Executive Closed Minutes

Closed Session (12:45 p.m.–1 p.m.) Room 1235

- Approval of Closed Session Minutes
- Awards and Agreements
- Closed Committee Reports

Open Session (1 p.m.–3:30 p.m.) Room 1235

- Approval of Minutes
- Resolution to Close September 2005
- Chairman's Report
- Director's Report
- Committee Reports
- Report of *ad hoc* Vision Task Group

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–15248 Filed 7–28–05; 3:12 pm]

BILLING CODE 7555–01–U

NATIONAL SCIENCE FOUNDATION

National Science Board; Workshop on Understanding Transformative Research Programs at the National Science Foundation; Sunshine Act Meeting

DATE AND TIME: August 12, 2005, 8:30 a.m.–5:15 p.m. (ET).

PLACE: National Science Foundation, 4201 Wilson Boulevard, Rooms 1235, 375 and 320, Arlington, VA 22230.

PUBLICE MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated Agenda. NSB Office: (703) 292–7000.

STATUS: This Workshop will be open to the public.

Provisional Workshop Agenda

Room 1235

8:30 a.m.–8:50 a.m.—Introduction and Overview.

8:50 a.m.–9 a.m.—Welcoming Remarks.

9 a.m.–10 a.m.—Topic I: Exemplar Transformative Research Funded by NSF.

10:15 a.m.–11:15 a.m.—Topic II: NSF Culture and Effect on Funding Potentially Transformative Research.

11:15 a.m.–12:15 p.m.—Topic III: NSF Mechanisms and Procedures for Supporting Potentially Transformative Research.

Rooms 375 and 320

12:30 p.m.–1:45 p.m.—Breakout Session I: Enhancing the Ability of NSF To Identify and Nurture Potentially Transformative Research.

- Role of Program Officers
- Role of Committees of Visitors
- Role of Advisory Committees

2 p.m.–3:15 p.m.—Breakout Session II: Improving NSF's Ability To Fund Potentially Transformative Research.

- Community Awareness
- Inhibitors for Current Mechanisms
- New Mechanisms

Room 1235

3:30 p.m.–5 p.m.—Plenary Meeting for Breakout Sessions I and II.

5 p.m.–5:15 p.m.—Summaries of Discussions and Next Steps for the NSB Task Force on Transformative Research.

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–15249 Filed 7–28–05; 3:13 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Exemption

1.0 Background

Entergy Operations, Inc. (licensee) is the holder of Renewed Facility Operating License No. DPR–51 which authorizes operation of the Arkansas Nuclear One, Unit 1 (ANO–1) nuclear power plant. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Pope County, Arkansas.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors," requires, among other items, that "[e]ach boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents [(LOCAs)] conforms to the criteria set forth in paragraph (b) of this section." Appendix K to 10 CFR Part 50, "ECCS Evaluation Models," requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The regulations at 10 CFR 50.46 and 10 CFR part 50, appendix K make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. Since the chemical composition of the M5 alloy differs from the specifications for zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material at ANO–1. Therefore, by letter dated September 30, 2004, the licensee requested the use of the M5 advanced alloy for fuel rod cladding at ANO–1.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption results in changes to the operation of the plant by allowing the use of the M5 alloy as fuel cladding material in lieu of zircaloy or ZIRLO. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. In addition, the granting of the licensee's exemption request will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.46 and 10 CFR part 50, appendix K, are to ensure that facilities have adequate acceptance criteria for the ECCS, and to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model, respectively. Topical Report (TR) BAW–10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR [pressurized-water reactor] Reactor

Fuel," which was approved by the NRC on February 4, 2000, demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy fuel rod cladding to M5 fuel rod cladding. In addition, TR BAW–10227P demonstrated that the Baker-Just equation (used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation) is conservative in all post-LOCA scenarios with respect to M5 advanced alloy as a fuel rod cladding material. Based on the above, no new accident precursors are created by using M5 fuel cladding, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. In addition, the licensee will use NRC-approved methods for the reload design process for ANO–1 reloads with M5 cladding. Therefore, there is no undue risk to public health and safety due to using M5 cladding.

Consistent With Common Defense and Security

The exemption requested results in changes to the operation of the plant by allowing the use of the M5 alloy as fuel cladding material in lieu of zircaloy or ZIRLO. This change to the fuel material used in the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption request.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for the ECCS. On February 4, 2000, the NRC staff approved TR BAW–10227P in which Framatome demonstrated that the effectiveness of the ECCS will not be affected by a change from zircaloy fuel rod cladding to M5 fuel rod cladding. The analysis described in the TR also demonstrated that the ECCS acceptance criteria applied to reactors fueled with zircaloy fuel rod cladding are also applicable to reactors fueled with M5 fuel rod cladding.

The underlying purpose of 10 CFR part 50, appendix K, paragraph I.A.5, is to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In TR BAW–10227P, Framatome demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material, and that the amount of hydrogen generated in an M5-clad core during a LOCA will remain within the ANO–1 design basis.

The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard zircaloy (1.7 percent tin) and low-tin zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures.

The NRC staff has reviewed the licensee's advanced cladding material, M5, for PWR fuel mechanical designs as described in TR BAW–10227P. In the safety evaluation for TR BAW–10227P dated February 4, 2000, the NRC staff concluded that, to the extent specified in the staff's evaluation, the M5 properties and mechanical design methodology are acceptable for referencing in fuel reload licensing applications. Therefore, since the underlying purposes of 10 CFR 50.46 and 10 CFR part 50, appendix K, paragraph I.A.5 are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR 50.46 and 10 CFR part 50, appendix K exist.

Summary

The staff has reviewed the licensee's request to use the M5 advanced alloy for fuel rod cladding in lieu of zircaloy or ZIRLO. Based on the staff's evaluation, as set forth above, the staff concludes that the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the staff concludes that the underlying purposes of 10 CFR 50.46 and 10 CFR part 50, appendix K are achieved through the use of the M5 advanced alloy. Therefore, pursuant to 10 CFR 50.12(a), the staff concludes that the use of the M5 advanced alloy for fuel rod cladding is acceptable and the exemption from 10 CFR 50.46 and 10 CFR part 50, appendix K is justified.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy Operations, Inc. an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, appendix K to allow the use of M5 cladding at ANO–1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 37126).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of July 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–15125 Filed 7–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

In the Matter of Envirocare of Utah, Inc.; Order Modifying Exemption From 10 CFR Part 70

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of order to modify Envirocare of Utah, Inc.'s exemption from requirements of 10 CFR part 70.

FOR FURTHER INFORMATION CONTACT: James Park, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5835, fax number: (301) 415–5397, e-mail: *JRP@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing an Order pursuant to section 274f of the Atomic Energy Act to Envirocare of Utah, Inc. (Envirocare) to modify Envirocare's exemption from certain NRC licensing requirements for special nuclear material.

II. Further Information

I

Envirocare of Utah, Inc, (Envirocare) operates a low-level waste (LLW) disposal facility in Clive, Utah. This facility is licensed by the State of Utah, an Agreement State. Envirocare also is licensed by Utah to dispose of mixed waste, hazardous waste, and 11e.(2) byproduct material (as defined under section 11e.(2) of the Atomic Energy Act of 1954, as amended).

II

Section 70.3 of 10 CFR part 70 requires persons who own, acquire, deliver, receive, possess, use, or transfer special nuclear material (SNM) to obtain a license pursuant to the requirements in 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities as defined in 10 CFR 150.11.

Pursuant to 10 CFR 70.17(a), "the Commission may * * * grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest."

On May 24, 1999, the NRC transmitted an Order to Envirocare. The Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at Envirocare's LLW disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The methodology used to establish these limits is discussed in the 1999 Safety Evaluation Report (SER) that supported the 1999 Order (ADAMS Legacy Library Accession No. 9905140064).

On January 30, 2003, the NRC revised the Order to: (1) Include stabilization of liquid waste streams containing SNM; (2) include the thermal desorption process; (3) change the homogenous contiguous mass limit from 145 kilograms (kg) to 600 kg; (4) change the language and SNM limit associated with footnotes "c" and "d" of Condition 1 to reflect all materials in Conditions 2 and 3; and (5) omit the confirmatory testing requirements for debris waste. The revised Order was published in the **Federal Register** on February 13, 2003 (68 FR 7399).

In a letter dated July 8, 2003, Envirocare proposed that the NRC amend the 2003 Order. The NRC has evaluated Envirocare's request in two phases. In the first phase, the NRC evaluated the following requested revisions: (1) Modify the table in Condition 1 to include limits for uranium and plutonium in waste without magnesium oxide; (2) modify the units of the table from picocuries of SNM per gram of waste material to gram of SNM per gram of waste material; and (3) revise the language of Condition 5 to be consistent with the revised units in the table in Condition 1. The first phase of these revisions was published in the **Federal Register** on December 29, 2003 (68 FR 74986).

In the second phase, which is the subject of this Order, the NRC evaluated the remaining revisions that were requested by Envirocare. These involve: (1) Modifying the table in Condition 1 to include criticality-based limits for uranium-233 and plutonium isotopes in waste containing up to 20 percent of materials listed in Condition 2 (*e.g.*, magnesium oxide); (2) including criticality-based limits in the table in Condition 1 for plutonium isotopes in waste with unlimited materials in Condition 2, and in waste with unlimited quantities of materials in Conditions 2 and 3 (*e.g.*, beryllium); (3) providing criticality-based limits for uranium-235 as a function of enrichment in waste containing up to 20 percent of materials listed in Condition 2 and in waste containing none of the materials listed in Condition 2; and (4) including additional mixed waste treatment technologies.

III

A principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the conditions specified below. Safeguarding SNM against diversion or sabotage is not considered a significant issue because of the diffuse form of the SNM in waste meeting the conditions specified. These conditions are considered an acceptable alternative to the criticality definition provided in 10 CFR 150.11, thereby assuring the same level of protection. The NRC staff reviewed the safety aspects of the proposed action (*i.e.*, the granting of Envirocare's request) in the SER, dated November 2004. The NRC staff concluded that additional conditions were required to maintain sufficient protection of health, safety, and the environment. The exemption conditions would be revised as follows:

1. For waste with no more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE A

SNM nuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	No materials listed in Condition 2	Maximum of 20 weight percent of materials listed in Condition 2 and no more than 1 weight percent of beryllium
U-235 (>50%)[a]	6.2E–4	5.4E–4
U-235 (=50%)	6.9E–4	6.1E–4
U-235 (=20%)	8.3E–4	7.4E–4
U-235 (=10%)	9.9E–4	8.8E–4
U-235 (=5%)	1.0E–3	9.6E–4
U-235 (=3%)	1.3E–3	1.1E–3
U-235 (=2%)	1.7E–3	1.5E–3
U-235 (=1.5%)	2.3E–3	2.1E–3
U-235 (=1.35%)	2.8E–3	2.5E–3

TABLE A—Continued

SNM nuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	No materials listed in Condition 2	Maximum of 20 weight percent of materials listed in Condition 2 and no more than 1 weight percent of beryllium
U-235 (=1.2%)	3.5E–3	3.2E–3
U-235 (=1.1%)	4.5E–3	4.2E–3
U-235 (=1.05%)	5.0E–3	4.8E–3
U-233	4.7E–4	4.3E–4
Pu-239	2.8E–4	2.6E–4
Pu-241	2.2E–4	1.9E–4

[a] Percentage value refers to weight percent enrichment in U–235. For enrichments that fall between identified values in the table, the higher value is the applicable value (*e.g.*, for an enrichment of 14 weight percent U–235, the applicable concentration limit is that for 20 weight percent U–235).

For waste with more than 20 weight percent of materials listed in Condition 2, concentrations of SNM in individual waste containers must not exceed the following values at time of receipt:

TABLE B

Radionuclide	Maximum SNM concentration in waste containing the described materials (g SNM/g waste)	
	Unlimited quantities of materials listed in Condition 2	Unlimited quantities of materials listed in Conditions 2 and 3
U-235 (>50%)	3.4E–4	1.2E–5
U-235	N/A	[a] 3.1E–4
U-233	2.9E–4	1.1E–5
Pu-239	1.7E–4	7.5E–6
Pu-241	1.3E–4	5.3E–6

[a] For uranium at any enrichment with sum of materials listed in Conditions 2 and beryllium not exceeding 45 percent of the weight of the waste.

Plutonium isotopes other than Pu-239 and Pu-241 do not need to be considered in demonstrating compliance with this condition. When mixtures of these SNM isotopes are present in the waste, the sum-of-the-fractions rule, as illustrated below, should be used.

$$\frac{\text{U-233 conc}}{\text{U-233 limit}} + \frac{\text{100wt\%U-235 conc}}{\text{100wt\%U-235 limit}} + \frac{\text{10wt\%U-235 conc}}{\text{10wt\%U-235 limit}} + \frac{\text{Pu-239 conc}}{\text{Pu-239 limit}} + \frac{\text{Pu-241 conc}}{\text{Pu-241 limit}} \leq 1$$

The concentration values in Condition 1 are operational values to ensure criticality safety. Where the values in Condition 1 exceed concentration values in the corresponding conditions of the State of Utah Radioactive Material License (RML), the concentration values in the RML, which are averaged over the container, may not be exceeded. Higher concentration values are included in Condition 1 to be used in establishing the maximum mass of SNM for non-homogeneous solid waste and liquid waste.

The measurement uncertainty values should be no more than 15 percent of the concentration limit, and represent the maximum one-sigma uncertainty associated with the measurement of the concentration of the particular radionuclide. When determining the applicable U-235 concentration limit for a specific enrichment percentage, the analytical uncertainty shall be added to the result (*e.g.*, for a measurement value of U-235 enrichment percentage of 1.1 +/− 0.2, the U-235 concentration limit corresponding to an enrichment percent of 1.35 shall be used). This shall be applied to analytical methods employed by the generator prior to receipt and by Envirocare upon receipt.

The SNM must be homogeneously distributed throughout the waste. If the SNM is not homogeneously distributed, then the limiting concentrations must not be exceeded on average in any contiguous mass of 600 kilograms of waste.

Liquid waste may be stabilized provided the SNM concentration does not exceed the SNM concentration limits in Condition 1. For containers of liquid waste with more than 600

kilograms of waste, the total mass of SNM shall not exceed the SNM concentration in Condition 1 times 600 kilograms of waste. Waste containing free liquids and solids shall be mixed prior to treatment. Any solids shall be maintained in a suspended state during transfer and treatment.

2. Except as allowed by Tables A and B in Condition 1, waste must not contain "pure forms" of chemicals containing carbon, fluorine, magnesium, or bismuth in bulk quantities (*e.g.*, a pallet of drums, a B–25 box). By "pure forms," it is meant that mixtures of the above elements, such as magnesium oxide, magnesium carbonate, magnesium fluoride, bismuth oxide, etc., do not contain other elements. These chemicals would be added to the waste stream during processing, such as at fuel facilities or treatment such as at mixed waste treatment facilities. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

3. Except as allowed by Tables A and B in Condition 1, waste accepted must not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste. The presence of the above materials will be determined by the generator, based on process knowledge, physical observations, or testing.

4. Waste packages must not contain highly water soluble forms of uranium greater than 350 grams of uranium-235 or 200 grams of uranium-233. The sum of the fractions rule will apply for mixtures of U-233 and U-235. Highly soluble forms of uranium include, but are not limited to: uranium sulfate, uranyl acetate, uranyl chloride, uranyl formate, uranyl fluoride, uranyl nitrate, uranyl potassium carbonate, and uranyl sulfate. The presence of the above materials will be determined by the generator, based on process knowledge or testing.

5. Waste processing of waste containing SNM will be limited to stabilization (mixing waste with reagents), micro-encapsulation and macro-encapsulation using low-density and high-density polyethylene, macro-encapsulation with cement grout, spray-washing, organic destruction (CerOx process and Solvent Electron Technology process), and thermal desorption.

Envirocare shall confirm that the SNM concentration in the rinse water does not exceed the limits in Condition 1 following spray-washing, prior to further treatment. If the rinse water is evaporated, the evaporated product shall comply with the requirements in Condition 1. Envirocare shall perform sampling and analysis of the liquid effluent collection system at a frequency of one sample per 300 gallons or when the system reaches capacity, whichever is less.

Envirocare shall track the SNM mass of waste treated using the CerOx process. When the total concentration of SNM is 85 percent of the sum of the fraction rule in Condition 1, Envirocare shall confirm the SNM concentration in the phase reactor tank and replace the solutions. The 10 percent enriched limit shall be used for uranium-235. The contents of the phase reactor tank should be solidified prior to disposal.

When waste is processed using the thermal desorption process and the Solvent Electron Technology process, Envirocare shall confirm the SNM concentration following processing and prior to returning the waste to temporary storage.

6. Envirocare shall require generators to provide the following information for each waste stream:

Pre-Shipment

Waste Description. The description must detail how the waste was generated, list the physical forms in the waste, and identify uranium chemical composition.

Waste Characterization Summary. The data must include a general description of how the waste was characterized (including the volumetric extent of the waste, and the number, location, type, and results of any analytical testing), the range of SNM concentrations, and the analytical results with error values used to develop the concentration ranges.

Uniformity Description. A description of the process by which the waste was generated showing that the spatial distribution of SNM must be uniform, or other information supporting spatial distribution.

Manifest Concentration. The generator must describe the methods to be used to determine the concentrations on the manifests. These methods could include direct measurement and the use of scaling factors. The generator must describe the uncertainty associated with sampling and testing used to obtain the manifest concentrations.

Envirocare shall review the above information and, if adequate, approve in writing this pre-shipment waste characterization and assurance plan before permitting the shipment of a waste stream. This will include statements that Envirocare has a written copy of all the information required above, that the characterization information is adequate and consistent with the waste description, and that the information is sufficient to demonstrate compliance with Conditions 1 through 4. Where generator process knowledge is used to demonstrate compliance with Conditions 1, 2, 3, or 4, Envirocare shall review this information and determine when testing is required to provide additional information in assuring compliance with the Conditions. Envirocare shall retain this information as required by the State of Utah to permit independent review.

At Receipt

Envirocare shall require generators of SNM waste to provide a written certification with each waste manifest that states that the SNM concentrations reported on the manifest do not exceed the limits in Condition 1, that the measurement uncertainty does not exceed the uncertainty value in Condition 1, and that the waste meets Conditions 2 through 4.

7. Sampling and radiological testing of waste containing SNM must be performed in accordance with the following: One sample for each of the first ten shipments of a waste stream; or one sample for each of the first 100 cubic yards of waste up to 1,000 cubic yards of a waste stream, and one sample for each additional 500 cubic yards of waste following the first ten shipments or following the first 1,000 cubic yards of a waste stream. Sampling and radiological testing of debris waste containing SNM (that is exempted from sampling by the State of Utah) can be eliminated if the SNM concentration is lower than one tenth of the limits in Condition 1. Envirocare shall verify the percent enrichment by appropriate analytical methods. The percent enrichment determination shall be made by taking into account the most conservative values based on the measurement uncertainties for the analytical methods chosen.

8. Envirocare shall notify the NRC, Region IV office within 24 hours if any of the above conditions are not met, including if a batch during a treatment process exceeds the SNM concentrations of Condition 1. A written notification of the event must be provided within 7 days.

9. Envirocare shall obtain NRC approval prior to changing any activities associated with the above conditions.

IV

Based on the staff's evaluation, the Commission has determined, pursuant to 10 CFR 70.17(a), that the exemption of above activities at the Envirocare disposal facility is authorized by law, and will not endanger life or property or

the common defense and security and is otherwise in the public interest. Accordingly, by this Order, the Commission grants an exemption subject to the stated conditions. The exemption will become effective after the State of Utah has incorporated the above conditions into Envirocare's radioactive materials license. In addition, at that time, the Order transmitted in December 2003 will no longer be effective.

Pursuant to the requirements in 10 CFR part 51, the Commission has prepared an Environmental Assessment (EA) for the proposed action and has determined that the granting of this exemption will have no significant impacts on the quality of the human environment. This finding was noticed in the **Federal Register** on July 18, 2005 (70 FR 41241).

V

Documents related to this action, including the application for amendment and supporting documentation, will be available electronically at the NRC's Electronic Reading Room at *http://www.NRC.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Envirocare's June 8, 2003, request (ML031950334), the NRC staff's July 2005 Environmental Assessment (ML041200390), and the NRC staff's June 2005 SER (ML041190003).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, Maryland this 22nd day of July, 2005.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–15123 Filed 7–29–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Inaccessible or Underground Cable Failures That Disable Accident Mitigation Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to:

Alert the licensees on the potential susceptibility of certain cables to affect the operability of multiple accident-mitigation systems;

Request that addressees provide information regarding the monitoring of the inaccessible or underground electrical cables in light of the information provided in this letter. Adequate monitoring will ensure that cables will not fail abruptly and cause plant transients or disable accident mitigation systems when they are needed;

Require addressees, to submit a written response to this generic letter pursuant to 10 CFR 50.54(f).

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML050880448.

DATES: Comment period expires September 30, 2005. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Thomas Koshy at 301–415–1176 or by e-mail *txk@nrc.gov*.

SUPPLEMENTARY INFORMATION: NRC Generic Letter 2005–XX, Inaccessible or Underground Cable Failures that Disable Accident Mitigation Systems.

Addressees

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Alert the licensees on the potential susceptibility of certain cables to affect the operability of multiple accident-mitigation systems.

(2) Request that addressees provide information regarding the monitoring of the inaccessible or underground electrical cables in light of the information provided in this letter. Adequate monitoring will ensure that cables will not fail abruptly and cause plant transients or disable accident mitigation systems when they are needed.

Pursuant to 10 CFR 50.54(f), addressees are required to submit a written response to this generic letter.

Background

Cable failures have a variety of causes: Manufacturing defects, damage caused by shipping and installation, and exposure to electrical transients or abnormal environmental conditions during operation. Most of these defects worsen gradually over time as insulation degradation leads to cable failure.

Electrical cables in nuclear power plants are usually located in dry environments. However, some cables are exposed to moisture from condensation and wetting in inaccessible locations such as buried conduits, cable trenches, cable troughs, duct banks, underground vaults and direct buried installations. Cables in these environments can fail due to various failure mechanisms such as water treeing (physical degradation), electrical treeing or other mechanisms of insulation degradation over varying voltage levels that decrease the dielectric strength of the conductor insulation.

Information Notice (IN) 2002–12 described medium-voltage cable failures at Oyster Creek and Davis-Besse and several other plants which experienced long-term flooding problems in manholes and duct banks in which safety related cables were submerged. In response to the concern identified in IN 2002–12, several plants began manhole restoration projects to replace faulty dewatering equipment and cable supports and made other modifications. Several other plants have reported water removal problems but have not yet

reported any program for the early detection of potential failures.

The rugged design of the electrical cables may prevent early failures even when they have been immersed in water for extended periods. When the staff observed that some of the cables qualified for 40 years through the equipment qualification program were also failing at several nuclear stations, a detailed review was conducted. Even though there are only about a dozen cables susceptible for moisture-induced damage in a nuclear station, the staff identified 23 Licensee Event Reports (LERs) and morning reports since 1988 on failures of buried medium-voltage cables from insulation failure. These reported events are believed to be only a very small fraction of the failures since not all cable failures are reportable. In most of the reported cases, the failed cables were in service for 10 years or more and none of these cables were identified as designed or qualified for long-term wetting or submergence.

Applicable Regulatory Requirements

NRC regulations in title 10 of the Code of Federal Regulations (CFR) part 50, Appendix A, General Design Criterion (GDC) 4 states that, "Structures, systems, and components important to safety shall be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation[.]"

10 CFR, part 50, Appendix A, GDC 17 states that, "Provisions shall be included to minimize the probability of losing electric power from any of the remaining [power] supplies, * * * loss of power from the transmission network, or the loss of power from the onsite electric power supplies."

10 CFR, part 50, Appendix A, GDC 18 states that, "Electric power systems important to safety shall be designed to permit appropriate periodic inspection and testing of important * * * features, such as wiring, insulation, * * * the operability of the systems as a whole and, * * * the transfer of power among the nuclear power unit, the offsite power system, and the onsite power system."

10 CFR 50.65(a)(1) states that, "Each holder of a license to operate a nuclear power plant * * * shall monitor the performance or condition of structures, systems, or components, * * * in a manner sufficient to provide reasonable assurance that such structures, systems, and components, * * * are capable of fulfilling their intended functions."

10 CFR, part 50, Appendix B, Criterion XI, requires, "A test program shall be established to assure that all testing required to demonstrate that * * * components will perform satisfactorily in service is identified and performed[.]"

These design criteria require that cables which are routed underground be capable of performing their function when subjected to anticipated environmental conditions such as moisture or flooding. Further, the design should minimize the probability of power interruption when transferring power between sources. The cable failures that could disable risk-significant equipment are expected to have monitoring programs to demonstrate that the cables can perform their safety function when called on. However, the recent industry cable failure data indicates a trend in unanticipated failures of underground/inaccessible cables that are important to safety.

Discussion

Although nuclear plant systems are designed against single failures, undetected degradation of cables due to pre-existing manufacturing defects or wetted environments of buried or inaccessible cables could result in multiple equipment failures. The following are examples of risk-significant cable failures:

- The failure of power cables that connect the offsite power to the safety bus could result in an inability to recover offsite power far beyond the coping time considered for station blackout conditions. The incipient failures of these cables can go undetected because these cables generally remain de-energized when the plant is generating power.
- The failure of the power cables from an emergency diesel generator (EDG) to the respective safety bus (where the EDGs are located in separate buildings) would prevent recovery of standby power from the respective EDG and result in the unavailability of a full train of accident mitigation systems during a loss-of-offsite-power event (LOOP).
- The failure of the power cables to an emergency service water (ESW) or component cooling water pump can disable one train of emergency core cooling systems for long-term service unless the headers can be cross-connected and the redundant pump(s) can be lined up to supply sufficient cooling for both trains. If the EDGs are cooled from ESW or service water, the cable failure could disable the EDG and lose one train of standby power.

At the Davis-Besse nuclear station, an underground cable insulation failure resulted in the trip of the 13.8kV circulating water pump breaker and loss of power to two other 4kV substations. The cable showed signs of insulation degradation caused by moisture intrusion (Inspection Report No: 05000346/2004017, ADAMS Accession No: ML050310426, issued on January 30, 2005). Generally, cable failure results in fault currents several orders of magnitude over the normal current. Until isolated by a breaker, the fault current or transient voltages travel on the immediate power systems, trip breakers that operate near their trip setpoint and fail other degraded insulation systems.

As cables that are not qualified for wet environments are exposed to wet environments, they will continue to degrade with an increasing possibility that more than one cable will fail on demand from a cable fault or a switching transient. While a single failure may be manageable, multiple failures of this kind would pose undue challenges for the plant operators.

Certain plants have reported failures in other safety systems such as auxiliary feedwater and containment spray systems with AC and DC power and control cables routed underground or along other inaccessible paths. Those degraded cables that are normally energized may fail to reveal their degraded condition, and the potential failure of the de-energized safety systems might only be revealed during a demand for the mitigation capability.

Certain licensees have attempted to periodically drain the accumulated water from the cable surroundings to avoid cable failures. In areas where the water table is relatively close to the cable, the water refills the cavity soon after the draining. In other cases, the water accumulates seasonally during snow fall or rain, filling the conduit or raceways, and cables may dry out whenever the humidity drops. In both cases, periodic draining may decrease the rate of insulation degradation but it does not prevent cable failures.

Potential cable failures can be detected through state-of-the-art techniques for measuring and trending the condition of cable insulation. The cables that are susceptible to moisture-induced failures may vary from plant to plant, and they are generally routed in underground conduits, concrete duct banks, cable trenches, cable troughs, underground vaults or direct buried installations. Selective use of testing techniques, such as the partial discharge test, time domain reflectometry, dissipation factor testing, very low frequency AC testing, and broadband impedance spectroscopy, have helped licensees assess the condition of cable insulation with reasonable confidence,

such that cables can be replaced in a planned way during refueling outages. The Oconee Nuclear Station relied on the partial discharge test to monitor the condition of the emergency power supply cable insulation and replaced the cable during a scheduled outage (Inspection Report 50–269/99–12, 50–270/99–12, ADAMS Accession No: ML0036767490 issued on September 21, 1999).

A diagnostic cable test program provides reasonable confidence that the cable will perform its intended function. The frequency of the test should be commensurate with the observed cable test results. To avoid unplanned outages and unanticipated failures, certain licensees have adopted a baseline frequency of 5 years for new cables or more frequent testing when insulation degradation is observed.

Requested Information

Within 90 days of the date of this generic letter, addressees are requested to provide the following information to the NRC:

(1) Provide a history of inaccessible or underground cable failures, that are within the scope of 10 CFR 50.65 (the Maintenance Rule), for all voltage levels indicating the type, voltage class, years of service and the root causes for the failure.

(2) Provide a description and frequency of all inspection, testing and monitoring programs, including surveillance programs, to detect degradation of inaccessible or underground cables used to support EDGs, offsite power, emergency service water, service water, component cooling water and other systems that are within the scope of 10 CFR 50.65 (the Maintenance Rule).

(3) If a program as described in (2) is not in place, explain why you believe such a program is not necessary.

The required written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, a copy of the response should be sent to the appropriate regional administrator.

Required Response

In accordance with 10 CFR 50.54(f), addressees are required to submit written responses to this generic letter. There are two options:

(a) Addressees may choose to submit written responses providing the information requested above within the requested time period.

(b) Addressees who cannot meet the requested completion date or who choose an alternate course of action are required to notify the NRC of these circumstances in writing as soon as possible but no later than 60 days from the date of this generic letter. The response must address any alternative course of action proposed, and the basis for the acceptability of the proposed alternative course of action.

Reasons for Requested Information

This generic letter requests addressees to submit information. The requested information will enable the NRC staff to determine whether applicable requirements (10 CFR part 50, Appendix A, General Design Criteria 4, 17 and 18; 10 CFR 50.65, and 10 CFR part 50, Appendix B, Criterion XI) are being met in regard to the operational readiness of the power system and accident mitigation systems and whether additional action is necessary on those topics. The staff considers 40 hours of information collection burden to be reasonable in light of the benefit gained to identify and correct unanticipated failures of accident mitigation systems.

Backfit Discussion

Under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this generic letter transmits an information request for the purpose of verifying compliance with applicable existing requirements. Specifically, the requested information will enable the NRC staff to determine whether applicable requirements (plant Technical Specification in conjunction with 10 CFR part 50, Appendix A, General Design Criteria 4, 17 and 18; 10 CFR 50.65, and 10 CFR part 50, Appendix B Criterion XI) are being met in regard to the operation readiness of the power system. No backfit is either intended or approved in the context of issuance of this generic letter. Therefore, the staff has not performed a backfit analysis.

Federal Register Notification

A notice of opportunity for public comment on this generic letter was published in the **Federal Register** on (xx Frxxxxx) on {date}. Comments were received from {indicate no of commentors by type}. The staff considered all comments that were received. The staff's evaluation of the comments is publicly available through the NRC's ADAMS under Accession No. ML052020036.

Paperwork Reduction Act Statement

This generic letter contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval No: 3150–0011, which expires on February 28, 2007.

The burden to the public for these mandatory information collections is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection contained in the generic letter and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Contacts

Please direct any questions about this matter to the technical contact listed below or the appropriate Office of Nuclear Reactor Regulation (NRR) project manager. Bruce A. Boger, Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

Technical Contact: Thomas Koshy, NRR, 301–415–1176. E-mail: *txk@nrc.gov.*

End of Draft Generic Letter

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 22nd day of July 2005.

For the Nuclear Regulatory Commission.

Patrick L. Hiland,

Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–15124 Filed 7–29–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Performance of Commercial Activities

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Update to Federal Pay Raise Assumptions, Inflation Factors, and Costing Software Used in OMB Circular No. A–76, "Performance of Commercial Activities."

SUMMARY: OMB is updating the annual federal pay raise assumptions and inflation cost factors used for computing the government's personnel and non-pay costs in public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76. These annual pay raise assumptions and inflation factors are based on the President's Budget for Fiscal Year 2006. OMB is also providing notice of an update to "COMPARE," the costing software agencies use when conducting public-private competitions.

DATES: *Effective date:* These changes are effective immediately and shall apply to all public-private competitions performed in accordance with OMB Circular A–76, as revised in May 2003, where the performance decision has not been certified by the government before this date.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, Office of Federal Procurement Policy (OFPP), NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Tel. No. 202–395–4953.

Availability: Copies of OMB Circular A–76 may be obtained on the Internet at the OMB home page at *www.whitehouse.gov/omb/circulars/index.html#numerical.* Paper copies of the Circular may be obtained by calling OFPP (tel: (202) 395–7579). The COMPARE software may be accessed at *http://www.compareA76.com.*

Joshua B. Bolten,

Director.

Memorandum for the Heads of Executive Departments and Agencies

From: Joshua B. Bolten, Director.

Subject: Update of Annual Federal Pay Raise Assumptions, Certain Inflation Factors, and Costing Software Used in OMB Circular A–76, Performance of Commercial Activities.

This memorandum updates the annual federal pay raise assumptions and inflation cost factors used for computing the government's personnel and non-pay costs in public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76. These annual pay raise assumptions and inflation factors are based on the President's Budget for Fiscal Year 2006. The memorandum also provides notice of an update to "COMPARE." COMPARE is the software agencies use to calculate costs and document performance decisions in public-private competitions.

1. *Federal pay raise assumptions.* The following Federal pay raise assumptions (including geographic pay differentials) that are in effect for 2005 shall be used for the development of government personnel costs. The pay raise factors provided for 2006 and beyond shall be applied to all government personnel with no assumption being made as to how they will be distributed between possible locality and base pay increases.

FEDERAL PAY RAISE ASSUMPTIONS*

Effective date	Civilian (percent)	Military (percent)
January 2005	3.5	3.5
January 2006	2.3	3.1

*Federal pay raise assumptions have not been established for pay raises subsequent to January 2006. For January 2007 and beyond, the projected percentage change in the Employment Cost Index (ECI), 4.2 percent should be used to estimate government personnel costs for public-private competitions. In future updates to cost factors in the Circular, as pay policy for years subsequent to 2006 is established, these pay raise assumptions will be revised.

2. *Inflation factors.* The following non-pay inflation cost factors are provided for purposes of public-private competitions conducted pursuant to Circular A–76 only. They reflect the generic non-pay inflation assumptions used to develop the fiscal year 2006 budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

NON-PAY CATEGORIES

[Supplies, equipment, etc.]

	(percent)
FY 2005	2.0
FY 2006	2.0
FY 2007	2.1
FY 2008	2.1
FY 2008	2.1
FY 2010	*2.1

*Any subsequent years included in the period of performance shall continue to use the 2.1% figure, until otherwise revised by OMB.

3. *COMPARE Update.* Revisions to Circular A–76, issued by OMB in May 2003, require agencies to use "COMPARE" when calculating costs in public-private competitions. This software incorporates the costing procedures of the revised Circular to ensure all agencies calculate and document the costs of public and private sector performance in a standardized manner when conducting public-private competitions under the Circular. The Department of Defense (DOD) maintains COMPARE on OMB's behalf.

DOD has completed a version update to COMPARE. COMPARE Version 2.1: (1) Improves the functionality of the software, (2) applies updated tax rate information (*i.e.*, from the updated tax

rate table) to establish the adjusted cost of private sector performance, (3) fully automates the calculation of contract administration costs to ensure consistent agency application of this factor in competitions, and (4) updates terminology to reflect changes made when the Circular was revised in May 2003. The software also provides an optional baseline costing capability that may be used at an agency's discretion or as otherwise prescribed in agency guidance (*e.g.*, for determining preliminary planning baseline costs and evaluating savings from completed competitions).

COMPARE Version 2.1 replaces Version 2.0 and interim instructions issued when OMB revised the Circular. Agencies shall use COMPARE Version 2.1 to calculate costs for all public-private competitions performed pursuant to the revised Circular A–76 where a performance decision has not been certified by the government by the effective date identified in the **Federal Register** notice accompanying the publication of this memorandum. As explained above, however, the baseline costing feature is currently optional and may be used at the agency's discretion or as otherwise prescribed in agency guidance.

COMPARE Version 2.1. and updated tables are located at *http://www.compareA76.com*.

[FR Doc. 05–15155 Filed 7–29–05; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28003]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 26, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 19, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 19, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Black Hills Corporation, *et al.* (70–10237)

Black Hills Corporation ("Black Hills"), a registered public-utility holding company, Black Hills Power, Inc. ("Black Hills Power") and Cheyenne Light, Fuel and Power Company, both electric-utility subsidiaries (together, "Utility Subsidiaries"), Black Hills Energy, Inc. ("Black Hills Energy"), a nonutility subsidiary, and all of Black Hills other subsidiaries (collectively, "Subsidiaries"), all located at 625 Ninth Street, Rapid City, SD 57701 (collectively, "Applicants"), have filed with the Commission a post-effective amendment to their previously filed application-declaration, as amended ("Application") under sections 6(a), 7, 9(a), 10, 11, 12(b) and (c), 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 52, 53, 54, 58 and 88 through 92.

I. Background

Black Hills is an integrated energy company engaged in three lines of business: (1) The generation, transmission, distribution and sale of electricity to retail and wholesale customers; (2) through Black Hills Energy and its subsidiaries, the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act, and qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities; and (3) exempt telecommunications activities.[1] Black Hills also has a service subsidiary, Black Hills Services Company, Inc., to provide centralized services (such as accounting, financial, human resources, information technology and legal services) to the companies in the Black Hills system.

On December 28, 2004, the Commission authorized Black Hills and its Subsidiaries to engage in various financing, and certain related, transactions.[2] The Financing Order authorized Black Hills to, among other things, establish and operate a Utility Money Pool and a Nonutility Money Pool (together, "Money Pools").

II. Requested Authority

Black Hills requests that it and its Subsidiaries be authorized to make certain modifications to the original arrangements for the Money Pools. In particular, Applicants propose to (1) modify the interest provisions of the Money Pools and (2) file quarterly money pool reports under rule 24.

Black Hills proposes to amend the Utility Money Pool and Nonutility Money Pool Agreements to clarify that each lender to either of the Money Pools may earn the same interest rate that the borrowers from the Money Pools pay. Black Hills also proposes that the interest rate charged on loans provided through the Money Pools will be the composite weighted average daily effective cost incurred by the lenders on externally obtained funds outstanding on that date. Applicants state that the daily effective cost shall be inclusive of interest rate swaps related to the external funds. In addition, Applicants propose that, if there are no external funds outstanding on a particular date, then the interest rate imposed will be the daily one-month LIBOR rate plus 100 basis points.

Black Hills was also authorized by the Financing Order to file various reports of financing-related activities on a quarterly basis. Applicants propose that, to the extent that money pool transactions are required to be reported under rule 24, Black Hills be allowed to submit cumulative reports of money pool transactions on a quarterly basis, rather than within ten days of each transaction as otherwise would be required under rule 24, on the schedule for quarterly rule 24 reports established in the Financing Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4089 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

[1] Applicants state that the exempt telecommunications businesses are under contract to be sold.

[2] *Black Hills Corporation, et al.*, Holding Company Act Release No. 27931 ("Financing Order").

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52123; File No. SR–DTC–2005–07]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to an Expansion of DTC's Inventory Management System

July 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 8, 2005, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on July 8, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is seeking to expand its Inventory Management System ("IMS") to offer additional customized transaction recycling capabilities and to provide users with an enhanced approval mechanism in order to give a user greater internal control over deliveries that they submit to DTC.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand IMS to offer additional customized transaction recycling capabilities and to provide users with an enhanced approval mechanism in order to give users greater internal control over deliveries that they submit to DTC.

Currently, a participant using IMS can prepopulate its profile to customize the position recycle order for its night cycle deliveries. These "high priority" transactions are processed in the prescribed order if the participant has sufficient shares in its account. If there are insufficient shares to complete these high priority transactions, then DTC attempts to complete lower prioritized transactions that can be completed with the shares the participant has available.

The rule proposal would: (i) Increase control over the processing order by adding two new recycle profiles; (ii) expand the recycle profiles to include Initial Public Offering ("IPO") transactions, and (iii) allow a participant's input to be subjected to secondary authorization through a new transaction type in IMS.

The new recycle profiles will allow participants to further customize the processing of their deliveries by either: (i) Electing to have the deliveries processed in strict profile order or (ii) enabling the participant to hold all or a specific set of deliveries in a separate profile until they are ready to release those transactions for processing. For each delivery that is customized and recycled based upon profile selection, a participant will be charged $0.06.

Currently, participants can only route their NDOs to IMS for authorization. Under this proposed rule, participants will be able to submit their manual or automated day deliveries for authorization based on predetermined profiles. A user will be able to create a profile by asset class and within asset class by input source (*e.g.*, only deliveries submitted by Participant Browser Service). The user will also be able to determine, based on input source, which delivery types (all valued, all free, only under/over valued deliveries) should be routed for authorization. For these deliveries, participants will be charged the current authorization fee of $0.006 each in addition to the applicable delivery fee.

Participants would not be required to make any systematic changes and could continue to process their deliveries as they do today. IMS recycle profiles would be optional, and users that do not elect to prioritize their deliveries through IMS will continue to be subjected to the existing default recycle profile.

DTC believes the new enhancements will enable participants to route all of their deliveries to IMS, which will: (i) Increase their ability to achieve straight-through processing; (ii) allow them to maximize their priority deliveries and associated settlement credits; and (iii) improve business continuity by having all of their deliveries residing at DTC throughout the day.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder applicable to DTC because it will promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency in processing member transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition. DTC has discussed the rule change proposal in its current form with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed IMS system.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[1] 15 U.S.C. 78s(b)(1).

[2] For additional information on DTC's IMS processing, see Securities Exchange Act Release Nos. 47826 (May 9, 2003), 68 FR 27876 (May 21, 2003) [File No. SR–DTC–2002–19] and 50690 (November 18, 2004), 69 FR 69433 (November 29, 2004) [File No. SR–DTC–2004–10].

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1.

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–DTC–2005–07 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–DTC–2005–07. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. 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–DTC–2005–07 and should be submitted on or before August 22, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4078 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52122; File No. SR–NASD–2005–092]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Operation of NASD's Alternative Display Facility as a Temporary Pilot

July 25, 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 July 20, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by NASD. NASD has designated the proposed rule change as a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend for nine months, to April 26, 2006, the operation of NASD's Alternative Display Facility ("ADF") on a pilot basis. The ADF pilot program, as approved by the SEC on July 24, 2002, and extended on April 17, 2003, January 26, 2004, and October 26, 2004, will expire on July 26, 2005. The pilot permits members to quote and trade only Nasdaq-listed securities on or through the ADF. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [July 26, 2005] *April 26, 2006.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

On July 24, 2002, the Commission approved SR–NASD–2002–97,[4] which authorizes NASD to operate the ADF on a pilot basis for nine months. NASD subsequently filed for immediate effectiveness proposed rule changes SR–NASD–2003–067 to extend the pilot until January 26, 2004;[5] SR–NASD–2004–012 to extend the pilot until October 26, 2004;[6] and SR–NASD–2004–160 to extend the pilot until July 26, 2005.[7] As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[8] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[9] In addition, since the Commission gave its initial approval to the ADF pilot, NASD has filed several other ADF-related rule change proposals

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[5] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

[6] Securities Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004).

[7] Securities Exchange Act Release No. 50601 (October 28, 2004), 69 FR 64611 (November 5, 2004).

[8] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[9] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

that have been incorporated into the operation and administration of the pilot.[10]

The ADF ultimately should provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because several regulatory issues relating to the trading of exchange-listed securities on the ADF have not been resolved.

The ADF has been operating successfully during the pilot period. In the SuperMontage approval order, the Commission stated that the ADF met the conditions set forth in that order to provide an alternative quotation collection, trade comparison, and trade reporting facility. NASD believes that the ADF has since continued to honor those conditions. Meanwhile, the issues related to trading exchange-listed securities—and by extension, approval of the operation of ADF on a permanent basis—remain unresolved. Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities for the shorter of nine months or until approval or until approval of the ADF on a permanent basis.

The proposed rule change will become effective upon filing, will be implemented on July 26, 2005, and will expire on April 26, 2006.

2. Statutory Basis

NASD believes that the rule proposal is consistent with Section 15A(b)(6) of the Act,[11] which requires that NASD rules must be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information 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. In addition, this rule proposal is consistent with Section 15A(b)(6) of the Act because it does not permit unfair discrimination between customers, issuers, brokers, or dealers; fix minimum profits; impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members; or regulate matters not related to the purposes of the Act or the administration of NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder[13] because the rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[14] NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of the notice of filing thereof and designates it to be operative immediately because the proposed rule change will prevent the benefits provided by the current ADF pilot program from lapsing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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–NASD–2005–092 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–NASD–2005–092. 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.

[10] On January 30, 2003, NASD filed proposed rule change SR–NASD–2003–009 to revise the transaction and quotation-related fees applicable to ADF activity during the pilot program. The rule change proposal became effective upon filing, with an implementation date of February 17, 2003. On January 6, 2004, the Commission granted accelerated approval to SR–NASD–2003–145, a proposal to amend the ADF pilot rules to give jurisdiction to a three-member subcommittee of NASD's Market Regulation Committee to review system outage determinations under NASD Rule 4300A(f) and excused withdrawal denials under NASD Rule 4619A. The rule change proposal became effective contemporaneous with the Commission's approval. On December 4, 2003, NASD filed for immediate effectiveness a proposed rule change to amend NASD Rule 4613A(c) to clarify that NASD may suspend quotations in the ADF displayed by any market participant, including an ECN, that are no longer reasonably related to the prevailing market.

Additionally, NASD filed with the Commission three other rule change proposals. On March 12, 2004, the Commission approved SR–NASD–2003–175, a proposal to repeal NASD Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. On August 18, 2004, the Commission approved SR–NASD–2004–002, a proposed rule change to amend NASD Rule 4300A to require an ADF Market Participant to provide advance written notice to NASD's ADF Market Operations before denying electronic access to its ADF quote to any NASD member in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to the Market Participant's quotations. On March 10, 2005, the Commission approved SR–NASD–2004–159, a proposed rule change to establish NASD Rule 4400A, which gives NASD authority to receive and review complaints against ADF Market Participants that allege denial of direct or indirect access pursuant to NASD Rule 4300A. Telephone conversation between Philip Shaikun, Associate General Counsel, NASD, and Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, on July 23, 2005.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement in this case.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 NASD. 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–NASD–2005–092 and should be submitted on or before August 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4087 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52121; File No. SR–NASD–2005–088]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-NASD Member Access to Nasdaq's Brut Facility

July 25, 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 July 15, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend, through December 31, 2005, the ability of non-NASD member firms to use Nasdaq's Brut Facility. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4901. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (h) No Change.

(i) The term "Participant" shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. Until [July] *December* 31, 2005, the term "Participant" shall also include non-NASD members that desire to use the System and otherwise meet all other requirements for System participation.

(j) through (w) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Brut provides direct access to its system to non-NASD member entities. As part of the original approval of Brut's Rules, Nasdaq and Commission Staff agreed to allow Brut to continue to provide such non-NASD member access until July 31, 2005. This filing seeks to extend Brut's ability to provide non-NASD member access through December 31, 2005, while Nasdaq and Commission staff continue to review issues related to non-member participation in facilities owned by self-regulatory organizations.

During the period of the above extension, Nasdaq will continue, pursuant to NASD Rule 4914, to maintain procedures and internal controls to restrict the flow of confidential information between the Brut System and the separate introducing broker functions that Brut performs for non-NASD member firms.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general and with Section 15A(b)(6) 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 remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective as a non-controversial proposal pursuant to Section 19(b)(3)(A) of the Exchange Act[6] and Rule 19b–4(f)(6)[7] thereunder because the rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

Nasdaq has requested that the Commission waive the five-day notice requirement and 30-day operative delay period so that the proposed rule change will be immediately operative. The Commission notes that the proposed rule change will not introduce any new changes to the current level of access to Nasdaq's Brut Facility, but will merely extend the access that is currently available to non-NASD members through Brut for an additional five months. The Commission also notes that the current rule granting non-NASD members access to Nasdaq's Brut Facility expires on July 31, 2005. Therefore, the Commission has determined to waive the five-day notice requirement and 30-day operative delay because such waiver will enable Nasdaq to implement the rule immediately and avoid any lapse in Brut access for non-NASD members.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–088 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–NASD–2005–088. 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 NASD. 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–NASD–2005–088 and should be submitted on or before August 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4088 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

[8] For purposes only of waiving the 30-day operative delay only, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52109; File No. SR–PCX–2005–72]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Q Orders

July 22, 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 June 7, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On July 6, 2005, the Exchange amended the proposed rule change ("Amendment No. 1").[3] The Exchange has designated the proposed rule change as "non-controversial" under section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. With this filing, the Exchange proposes to modify its Q Order definition. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31 (a)–(j)—No Change.

(k) Q Order

(1) A Q Order is a limit order submitted to the Archipelago Exchange by a Market Maker.

(A) A Market Maker may instruct the Archipelago Exchange before 6:28 a.m. (Pacific Time) to enter a Q Order on their behalf as follows:

(1) At the last price and size entered by the Market Maker during the previous trading day, either including or excluding reserve size;

(2) At a specified percentage from the best bid or offer;

(3) At the standard Q defined as $0.01 bid and 2 times the previous day's close for the offer with specified display and reserve sizes.

Upon execution, the Q Order entered pursuant to the above instructions will automatically repost with the original size and $10 below the original bid or $10 above the original offer, but never below $0.01.

Rule 7.31(k)(2)–(h)(h)—No Change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange inserted the Statutory Basis section, which had been inadvertently omitted, and corrected the language set forth in Item III. The effective date of the original proposed rule change is June 7, 2005, and the effective date of the amendment is July 6, 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 July 6, 2005, the date on which the PCX submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

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 PCX 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 PCX 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to modify its Q Order definition. In particular, the Exchange seeks to provide Market Makers with the option to instruct ArcaEx to submit a Q Order on their behalf.

Currently, PCXE Rule 7.31(k) describes Q Orders as a limit order submitted to the Exchange by a Market Maker. As part of their Market Maker obligations, pursuant to PCXE Rule 7.23, Market Makers are required to maintain continuous, two-sided Q Orders in the securities in which the Market Maker is registered to trade. In order to assist the Market Makers with this obligation, the Exchange proposes to offer functionality in which the Market Makers could choose to have the Exchange enter and maintain a Q Order on their behalf. At 6:28 a.m. Pacific time, the Exchange would extract information submitted by the Market Maker that provides specific quote instructions for the Exchange to enter a quote on the Market Maker's behalf. Specifically, the Market Maker would instruct ArcaEx to enter a Q Order based on one of the following options:

(1) At the last price and size entered by the Market Maker during the previous trading day, either including or excluding reserve size;

(2) At a specified percentage from the best bid or offer; or

(3) At the standard Q defined as $0.01 bid and 2 times the previous day's close for the offer with specified display and reserve sizes.

Conversely, the Market Maker could choose to enter their own Q Order, or request that their previous day's Q Order be canceled. In addition, upon execution of the Q Order that was entered according to one of the aforementioned options, the Exchange would automatically repost the Q Order with the original size and $10 below the original bid or above the original offer, but never below $0.01. Lastly, in an instance of a bulk cancel, the Exchange would not automatically cancel Q orders.

The proposed rule change would be similar to Nasdaq Stock Market rules that were recently published in the **Federal Register** for immediate effectiveness.[6] In particular, Nasdaq proposed functionality for Nasdaq Quoting Market Participants to instruct Nasdaq to open their quotes based on a variety of choices.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The PCX has requested that the Commission waive the 30-day operative delay for "non-controversial" proposals because the proposed rule change is similar to rules in effect on the Nasdaq Stock Market. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal would allow the PCX to offer market makers a means by which to manage their Q Orders. In addition, the proposal would introduce a functionality that is similar to one in effect on The Nasdaq Stock Market. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9309.

All submissions should refer to File Number SR–PCX–2005–72. This file number should be included on the subject line if e-mail is used. To help the

[6] *See* Securities Exchange Act Release No. 51522 (April 11, 2005), 70 FR 20955 (April 22, 2005) (SR–NASD–2005–050).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). The Commission notes that PCX provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change.

[11] For purposes only of waiving the 30-day operative delay of the proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–72 and should be submitted on or before August 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4082 Filed 7–29–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52114; File No. SR–Phlx–2005–44]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Payment for Order Flow Program

July 22, 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 July 1, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 20, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On July 21, 2005, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] The Phlx has designated this proposal as one changing a fee imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal, as amended, 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 Phlx proposes to amend its equity options payment for order flow program as follows: (1) A payment for order flow fee will be assessed only on electronically delivered orders, thus payment for order flow fees will not be assessed on non-electronically delivered orders, *i.e.*, floor brokered orders; (2) payment for order flow fees will increase from $0.40 to $0.60 per contract for all options other than Nasdaq-100 Index Tracking Stock℠ traded under the symbol QQQQ ("QQQQ"),[7] and iShares FTSE/Xinhua China Index Fund ("FXI Options"), an exchange-traded fund; (3) the payment for order flow fee will decrease from $1.00 to $0.75 for options on QQQQ; (4) Directed ROTs may elect to be assessed or not to be assessed a payment for order flow fee for orders directed to them; and (5) Directed ROTs will no longer be able to request reimbursement for payment for order flow paid to order flow providers.

Equity Options Payment for Order Flow Program in Effect Beginning June 2, 2005[8]

Beginning June 2, 2005, the Exchange established a payment for order flow program to take into account Directed Orders[9] pursuant to new Exchange Rule 1080(l).[10] Pursuant to Exchange Rule 1080(l), Exchange specialists,[11] SQTs[12] and RSQTs[13] trading on the Exchange's electronic options trading platform, Phlx XL,[14] may receive Directed Orders from Order Flow Providers.[15]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange: (1) Revised the proposed rule text to clarify the provision on the return of any excess payment for order flow funds that are billed but not reimbursed to specialists; (2) revised the purpose section to clarify that Directed Registered Options Traders ("Directed ROTs") may elect to be assessed or not to be assessed a payment for order flow fee and to clarify the example of how payment for order flow reimbursement is calculated; and (3) made several technical corrections to the proposed rule change.

[4] In Amendment No. 2, the Exchange made a technical correction to the proposed rule text.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. The Exchange states that Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[8] On June 2, 2005, the Exchange filed to amend its payment for order flow program effective as a pilot program for trades involving payment for order flow and Directed ROTs settling on or after June 2, 2005 through May 27, 2006. *See* Securities Exchange Act Release No. 51909 (June 22, 2005), 70 FR 37484 (June 29, 2005) (SR–Phlx–2005–37). Although the Commission subsequently abrogated SR–Phlx–2005–37 on July 7, 2005, it was in effect until the filing of the current proposal, SR–Phlx–2005–44, on July 1, 2005. *See* Securities Exchange Act Release No. 51984 (July 7, 2005), 70 FR 40413 (July 13, 2005).

[9] The term "Directed Order" means any customer order to buy or sell which has been directed to a particular specialist, Remote Streaming Quote Trader ("RSQT") (as defined below), or Streaming Quote Trader ("SQT") (defined below) by an Order Flow Provider (as defined below). The provisions of Exchange Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2006. *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91).

[10] *See* Securities Exchange Act Release No. 51909 (June 22, 2005), 70 FR 37484 (June 29, 2005) (SR–Phlx–2005–37).

[11] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[12] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. *See* Exchange Rules 1014(b)(ii) and 1080.

[13] An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B). *See* Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR–Phlx–2004–90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR–Phlx–2005–12).

[14] In July 2004. the Exchange began trading equity options on Phlx XL, followed by index options in December 2004. *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR–Phlx–2003–59).

[15] The term "Order Flow Provider" means any member or member organization that submits, as

The Exchange charges a payment for order flow fee of $0.40 on equity options traded on the Phlx, other than options on the QQQQ, which are assessed a payment for order flow fee of $1.00, and FXI Options, which are not assessed a payment for order flow fee.

Pursuant to Exchange Rule 1080, specialists, SQTs and RSQTs may receive Directed Orders in accordance with the provisions of Exchange Rule 1080(l). When a Directed Order is received, the specialist, SQT or RSQT to whom the order is directed (the "Directed Participant") is not assessed a payment for order flow fee.[16] For trades involving Directed Orders, the payment for order flow fee is assessed, however, on a specialist and ROT[17] when they are not Directed Participants for that transaction, as long as they are allocated any remaining contracts after the Directed Participant receives its trade allocation if the specialist or Directed ROT makes arrangements to pay for order flow and has elected to participate in the Exchange's payment for order flow program.[18] The Exchange states that thus, the payment for order flow fee is applied, in effect, to equity option transactions between a ROT and a customer, and also to trades between a specialist and a customer when an order is directed to a Directed ROT.

For orders that are delivered electronically,[19] but are not directed to a Directed Participant, the specialist is not assessed a payment for order flow fee.[20] ROTs are assessed the applicable payment for order flow fee if the specialist participates in the Exchange's payment for order flow program.

For orders that are executed and not delivered electronically and thus not directed to a Directed Participant, such as orders represented by a floor broker, ("Non-Directed Orders"), a payment for order flow fee is assessed if the specialist or at least one Directed ROT participates in the Exchange's payment for order flow program for that option. If there are no Directed ROTs participating in the exchange's payment for order flow program, the specialist will not be billed a payment for order flow fee for that option if the specialist participates in the payment for order flow program. Also, if the specialist does not participate in the payment for order flow program and there is one Directed ROT who participates in the payment for order flow program for that option, the Directed ROT will not be charged a payment for order flow fee.[21]

The Exchange must be notified of the election to participate or not to participate in the payment for order flow program in writing no later than five business days prior to the start of the month for which reimbursement for monies expended on payment for order flow will be requested.[22] The result of electing not to participate in the program is a waiver of the right to any reimbursement of payment for order flow funds for such month(s). If a specialist or Directed ROT opts into the program for all options and does not request any payment for order flow reimbursement more than two times in a six-month period, it will be precluded from entering in its entirety in the payment for order flow program for the next three months.

Beginning with transactions settling on or after June 2, 2005, the Exchange modified the time periods during which specialists and Directed ROTs elect to participate in the program. Specialists and Directed ROTs may elect to participate or not to participate in the payment for order flow program on an option-by-option basis if they notify the Exchange in writing no later than three business days prior to entering into or opting out of the payment for order flow program. Specialists or Directed ROTs may only opt into or out of the Exchange's payment for order flow program by option one time in any given month.

Thus, if at any time during a month, a specialist or Directed ROT opts into the payment for order flow program for a particular option, a payment for order flow fee will be assessed that month. For example, a payment for order flow fee will be assessed, even beginning mid-month, if an option is allocated, or reallocated from a non-participating specialist unit, to a specialist unit that participates in the Exchange's payment for order flow program. In addition, payment for order flow fees will be assessed, even beginning mid-month, if order flow is directed to a Directed ROT who has elected to participate in the Exchange's payment for order flow program, even if the specialist to whom the option is allocated has opted out of

agent, customer orders to the Exchange. *See* Exchange Rule 1080(l).

[16] The Exchange states that this is similar to previous Exchange payment for order flow programs where the payment for order flow fee was not assessed on the specialist because the specialist would be asking, in effect, for reimbursement of its own funds.

[17] References to ROTs include all ROTs, *i.e.*, on-floor ROTs, SQTs, and RSQTs, other than an SQT or RSQT to whom an order is directed ("Directed ROT").

[18] For example, if an order is directed to an RSQT and the RSQT receives its trade allocation, after all public customers bidding or offering at the same price have received allocations, any contracts remaining from the Directed Order may be allocated to the specialist, SQTs, or RSQTs, as well as other ROTs in accordance with Exchange Rule 1014(g)(viii).

[19] The Exchange states that electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[20] The Exchange states that this is similar to its equity options payment for order flow program in effect prior to June 2, 2005 where the payment for order flow fee was not assessed on the specialist because the specialist would be asking, in effect, for reimbursement of its own funds.

[21] The Exchange proposes to clarify the assessment of the payment for order flow fee for Non-Directed Orders as it appeared in the Exchange's previous filing. *See supra* note 10. The Exchange believes that specific examples should help to clarify when a payment for order flow fee is assessed in connection with Non-Directed Orders. Thus, for Non-Directed Orders: (1) A payment for order flow fee will be assessed on the specialist for equity option transactions between the specialist and customer if a Directed ROT participates in the Exchange's payment for order flow program in that option; (2) if the specialist does not participate in the payment for order flow program and there is one Directed ROT who participates in the payment for order flow program for that option, the Directed ROT will not be charged a payment for order flow fee; (3) a payment for order flow fee will be assessed on all ROTs, including Directed ROTs for equity option transactions between a ROT, including a Directed ROT, and a customer, if the specialist participates in the Exchange's payment for order flow program for that option, *i.e.*, if there are no Directed ROTs participating in the Exchange's payment for order flow program, the specialist who is participating in the payment for order flow program will not be billed a payment for order flow fee for that option; and (4) a payment for order flow fee will be assessed on all ROTs, except the Directed ROT, for equity option transactions between a ROT and a customer if only one Directed ROT participates in the Exchange's payment for order flow program for that option. If the specialist and at least one Directed ROT participate in the program, then the specialist, Directed ROT(s), and ROT(s) will be assessed a payment for order flow fee. Also, if a specialist does not participate in the payment for order flow program, but more than one Directed ROT participates in the payment for order flow program, then the specialist, Directed ROT(s) and ROT(s) will be assessed a payment for order flow fee. No payment for order flow fee will be assessed if the specialist and all Directed ROTs elect not to participate in the Exchange's payment for order flow program for that option.

[22] Specialists and Directed ROTs are required to notify the Exchange in writing to either elect to participate or not to participate in the program. Once an election to participate or not to participate in the Exchange's payment for order flow program in a particular month has been made, no notice to the Exchange is required in a subsequent month, as described above, unless there is a change in participation status. For example, if a Directed ROT elected to participate in the program and provided the Exchange with the appropriate notice, that Directed ROT would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (a change from its current status), it would need to notify the Exchange in accordance with the requirements stated above. Specialists and Directed ROTs who have notified the Exchange in writing as to whether they elected to participate or not to participate in the program that was in effect prior to June 2, 2005 did not need to notify the Exchange again, unless there was a change from their current status.

the program, as long as the required notice is given.

The payment for order flow fee is billed and collected on a monthly basis. Because the specialists and Directed ROTs in the payment for order flow program are not charged the payment for order flow fee for orders directed to them, they may not request reimbursement for order flow funds in connection with any transactions directed to them to which they were a party.

Payment for order flow reimbursements are requested on an option-by-option basis, consistent with the payment for order flow program in effect prior to June 2, 2005. The Exchange states that the collected funds are to be used as a reimbursement for monies expended to attract options orders to the Exchange by making payments to Order Flow Providers who provide order flow to the Exchange. The Exchange states that the funds will be received only after submitting an Exchange certification form identifying the amount of the requested funds.[23]

The Exchange further states that the amount received in reimbursement will be limited. For a specialist who elects to participate in the Exchange's payment for order flow program ("participating specialist"), the amount of reimbursement is limited to the percentage of ROT monthly volume to total participating specialist and ROT monthly volume in the equity option payment for order flow program. For a Directed ROT, the amount of reimbursement is limited to the percentage of ROT and specialist monthly volume to total ROT, specialist and that Directed ROT's monthly volume in the payment for order flow program. Payment for order flow charges are assessed and reimbursed as described in detail below:

Participating Specialist Method

If a participating specialist unit has a payment for order flow arrangement with an Order Flow Provider to pay that Order Flow Provider $0.50 per contract for order flow routed to the Exchange and that Order Flow Provider sends 90,000 customer contracts to the Exchange in one month for one option, then the participating specialist would be required, pursuant to its agreement with the Order Flow Provider, to pay the Order Flow Provider $45,000 for that month. Assuming that the 90,000 represents 30,000 participating specialist contracts, 30,000 ROT contracts (which includes 10,000 from Directed ROTs who, in effect, are ROTs for that order) and 30,000 contracts from firms, broker-dealers and other customers, the participating specialist may request reimbursement of up to 50% (30,000 ROTs contracts/60,000, which is comprised of 30,000 ROT contracts + 30,000 specialist contracts)) of the amount paid ($45,000 × 50% = $22,500). Although the ROTs will have paid a total of $30,000 (30,000 contracts × $.40 per contract, which equals $12,000, + $18,000 Non-Directed Orders (as calculated below)) into the payment for order flow fund for that month, the participating specialist may collect up to $22,500 of its $22,500 reimbursement request. The excess funds (funds remaining after reimbursement requests are processed, which in this instance totals $7,500 ($30,000–$22,500) for that particular month are rebated on a pro rata basis by option to all those who were billed payment for order flow charges in that option for that same month.

Directed ROT Method

If a Directed ROT unit has a payment for order flow arrangement with an Order Flow Provider to pay that Order Flow Provider $0.60 per contract for order flow routed to the Exchange and that Order Flow Provider sends 90,000 customer contracts to the Exchange in one month for one option, then the Directed ROT would be required, pursuant to its agreement with the Order Flow Provider, to pay the Order Flow Provider $54,000 for that month. Assuming that the 90,000 represents 30,000 specialist contracts, 20,000 ROT contracts, 10,000 Directed ROT contracts and 30,000 contracts from firms, broker-dealers and other customers, the Directed ROT may request reimbursement of up to 83.33% (50,000 which is comprised of 30,000 + 20,000/60,000, which is comprised of 30,000 + 20,000 + 10,000) of the amount paid ($54,000 × 83.33% = $44,998.20). However, because the specialist and ROTs will have paid $26,000 (50,000 contracts × $0.40 per contract, which equals $20,000, + $6,000 from the Non-Directed transactions (as calculated below)) into the payment for order flow fund for that month, the Directed ROT may collect only $26,000 of its $44,998.20 reimbursement request. If there were any excess funds for that particular month, they would be rebated on a pro rata basis by option to all those who were billed payment for order flow charges in that option for that same month.

Non-Directed Order Method

The Exchange states that funds billed and collected for Non-Directed Orders are apportioned on a pro rata basis among those seeking reimbursement.[24] For example, if Order Flow Providers send 90,000 Non-Directed customer contracts to the Exchange's trading floor via a floor broker in one month for one option in which both the specialist and Directed ROT participate in the payment for order flow program, then the specialist and ROTs (including the Directed ROT) will be billed the applicable per contract payment for order flow fee on orders matching with a customer. Thus, assuming that the 90,000 represents 30,000 specialist contracts, 30,000 ROT contracts, and 30,000 contracts from firms, broker-dealers and other customers, the Exchange will bill payment for order flow charges of $24,000 (30,000 specialist contracts × $0.40 per contract = $12,000 plus 30,000 ROT contracts × $0.40 per contract = $12,000) on these transactions.

Distribution of Available Funds

Funds collected from the payment for order flow program will be available as described below. The payment for order flow funds will be collected and distributed on a pro rata basis. Each specialist and Directed ROT in the payment for order flow program has an amount from which it can request payment for order flow funds. The participating specialist fund will contain payment for order flow funds as calculated by the participating specialist reimbursement method plus payment for order flow funds allocated to it from the Non-Directed allocation method. The Directed ROT fund will contain payment for order flow funds as calculated by the Directed ROT reimbursement method plus payment for order flow funds allocated to it from the Non-Directed method.

For example, the payment for order flow funds distributed from Non-Directed Orders to specialists and Directed ROTs in the payment for order flow program would be calculated as follows: Assuming the activity in the month is 300,000 contracts for which the specialist traded 150,000 contracts and the Directed ROT traded 50,000 contracts and 100,000 contracts from firms, broker-dealers, ROTs and other customers, the participating specialist

[23] The Exchange states that specialists and Directed ROTs are given instructions as to when the certification forms are required to be submitted. While all determinations concerning the amount that will be paid for orders and which Order Flow Providers shall receive these payments are made by the specialists and Directed ROTs in the payment for order flow program, they must provide to the Exchange on an Exchange form certain information as required by the Exchange.

[24] *See supra* note 21 for further details regarding the Non-Directed Order method.

fund, which includes Directed Orders and Non-Directed Orders represents 75% (150,000/150,000 + 50,000) of the total Non-Directed payment for order flow charges for that option $24,000, which totals $18,000 (75% × $24,000) and the Directed ROT fund represents 25% (50,000/150,000 + 50,000) × $24,000) of the total Non-Directed payment for order flow charges for that option ($6,000). Thus, the Participating specialist fund will include $18,000 (75% (150,000/150,000 + 50,000) × $24,000) from the Non-Directed calculation plus $12,000 from the participating specialist calculation above and the Directed ROT fund will include $6,000 (25% (50,000/150,000 + 50,000) × $24,000) from the Non-Directed calculation plus $20,000 from the Directed ROT calculation above. As stated above, any excess funds for that particular month will be rebated on a pro rata basis by option to all those who were billed payment for order flow charges in that option for that same month.

The Exchange states that excess funds are reflected as a credit on the monthly invoices and rebated on a pro rata, option-by-option, basis to the specialists and ROTs who were billed payment for order flow charges for that same month.

The Exchange states that reimbursements may not exceed the payment for order flow amount billed and collected in a given month.[25]

Proposed Equity Options Payment for Order Flow Program To Be in Effect for Transactions Settling on or After July 1, 2005

The Exchanges proposes that only orders that are delivered electronically, over AUTOM, would be assessed a payment for order flow fee if the specialist has elected to opt into the payment for order flow program for that option. For those orders that are not delivered electronically, *i.e.*, represented by a floor broker, a payment for order flow fee would no longer be assessed on those equity option transactions.[26]

If the specialist unit opts into the program, the Exchange would charge a payment for order flow fee of $0.60 on all equity options traded on the Exchange that are delivered electronically over AUTOM, other than options on the QQQQ, which would be assessed a payment for order flow fee of $0.75. FXI Options would continue to not be assessed a payment for order flow fee.

Directed ROTs and ROTs

The Exchange states that, for Directed Orders received over AUTOM, the Directed ROT would elect to be assessed or not to be assessed a payment for order flow fee for orders directed to them when the specialist has elected to participate in the payment for order flow program for that option. Directed ROTs would not be able to request reimbursement for payment for order flow paid to order flow providers.

Directed ROTs would be required to notify the Exchange of the election to pay or not to pay the payment for order flow fee in writing no later than five business days prior to the start of the month for which the payment for order flow fee is to be assessed.[27]

However, the payment for order flow fee would be assessed on any ROT (but not the Directed ROT for that transaction when the Directed ROT has opted out of the payment for order flow program) if the ROT participates in the allocation of any remaining contracts after the Directed ROT receives its trade allocation. The Exchange states that thus, consistent with current practice, the payment for order flow fee would be applied, in effect, to equity option transactions between a ROT (and Directed ROT who has elected to be assessed a payment for order flow fee) and a customer.[28] Equity option transactions between a customer and ROT would continue to be assessed a payment for order flow fee.

Specialists

Specialists would not be assessed a payment for order fee.[29]

The Exchange states that, consistent with current practice, the Exchange would have to be notified of the election to participate or not to participate in the payment for order flow program in writing no later than five business days prior to the start of the month for which reimbursement for monies expended on payment for order flow would be requested.[30] The Exchange states that the result of electing not to participate in the program would be a waiver of the right to any reimbursement of payment for order flow funds for such month(s). If a specialist opts in its entirety into the program and does not request any payment for order flow reimbursement more than two times in a six-month period, it would be precluded from entering in its entirety in the payment

[25] The Exchange states that no other changes to the Exchange's payment for order flow program were made. For example, the 500 contract cap per individual cleared side of a transaction continued to be imposed. Thus, the applicable payment for order flow fee is imposed only on the first 500 contracts, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one ROT, the applicable payment for order flow fee would be applied to, and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is equally divided among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis. *See* Securities Exchange Act Release Nos. 47958 (May 30, 2003), 68 FR 34026 (June 6, 2003) (proposing SR–Phlx–2002–87); 48166 (July 11, 2003), 68 FR 42450 (July 17, 2003) (approving SR–Phlx–2002–87); and 50471 (September 29, 2004), 69 FR 59636 (October 5, 2004) (SR–Phlx–2004–60). In addition, the Exchange states that it also continued to implement a quality of execution program.

[26] Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[27] For the month of July 2005, Directed ROTs must notify the Exchange by close of business on July 1, 2005. Directed ROTs would be required to notify the Exchange in writing to either elect to pay the payment for order flow fee or not to pay the fee when the specialist has elected to opt into the payment for order flow program for that option. The Directed ROT would not need to notify the Exchange in writing to either elect to pay the payment for order flow fee or not to pay the fee if the specialist for that option does not participate in the Exchange's payment for order flow program. Once an election to pay the payment for order flow fee or not to pay the payment for order flow fee in a particular month has been made, no notice to the Exchange would be required in a subsequent month unless there is a change in participation status.

[28] Thus, the payment for order flow fee would not be assessed on transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. The ROT payment for order flow fee would not apply to index options or foreign currency options. For purposes of the payment for order flow program, a firm is defined as a proprietary account of a member firm, and not the account of an individual member and a broker-dealer orders are orders entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-the-floor.

[29] For purposes of this filing and assessing payment for order flow fees, the Exchange does not differentiate between specialists and specialists who receive Directed Orders.

[30] The Exchange states that, consistent with the current practice, specialists would be required to notify the Exchange in writing to either elect to participate or not to participate in the program. Once an election to participate or not to participate in the Exchange's payment for order flow program in a particular month has been made, no notice to the Exchange is required in a subsequent month, as described above, unless there is a change in participation status. For example, if a specialist elected to participate in the program and provided the Exchange with the appropriate notice, that specialist would not be required to notify the Exchange in the subsequent month(s) if it intends to continue to participate in the program. However, if it elects not to participate (a change from its current status), it would need to notify the Exchange in accordance with the requirements stated above. Specialists who have already notified the Exchange in writing as to whether they have elected to participate or not to participate in the program that was in effect prior to July 1, 2005 do not need to notify the Exchange again, unless there is a change from their current status.

for order flow program for the next three months.

Specialists would also be able to elect to participate or not to participate in the payment for order flow program on an option-by-option basis if they notify the Exchange in writing no later than three business days prior to entering into or opting out of the payment for order flow program. Specialists may only opt into or out of the Exchange's payment for order flow program by option one time in any given month.

Thus, if at any time during a month, a specialist opts into the payment for order flow program for a particular option, a payment for order flow fee would be assessed for that portion of the month. For example, a payment for order flow fee would be assessed, even beginning mid-month, if an option is allocated, or reallocated from a non-participating specialist unit, to a specialist unit that participates in the Exchange's payment for order flow program.

Payment for order flow charges apply to ROTs or Directed ROTs that have elected to be assessed the payment for order flow fee as long as the specialist unit for that option has elected to participate in the Exchange's payment for order flow program.

The payment for order flow fee would continue to be billed and collected on a monthly basis. Because the specialists would not be charged the payment for order flow fee, they may not request reimbursement for order flow funds in connection with any transactions to which they were a party.

The Exchange states that specialists would request payment for order flow reimbursements on an option-by-option basis, consistent with the current practice. The Exchange further states that the collected funds are to be used by each specialist as a reimbursement for monies expended to attract options orders to the Exchange by making payments to Order Flow Providers who provide order flow to the Exchange. Specialists would receive their respective funds only after submitting an Exchange certification form identifying the amount of the requested funds.[31]

The amount a specialist may receive in reimbursement would be limited. For a specialist who has elected to participate in the Exchange's payment for order flow program for electronically delivered orders, the amount of reimbursement would be limited to the percentage of ROT and Directed ROT monthly volume to total participating specialist, Directed ROT, and ROT monthly volume in the equity option payment for order flow program.

Specialist Calculation

Funds collected from the payment for order flow program would be available to the specialist participating in the payment for order flow program as described below:

If a specialist unit in the payment for order flow program has a payment for order flow arrangement with various Order Flow Providers to pay the Order Flow Providers $0.50 per contract for order flow routed to the Exchange, including for order flow sent to Directed ROTs, and those Order Flow Providers send 90,000 customer contracts to the Exchange in one month for one option, then the specialist would be required, pursuant to its agreement with the Order Flow Providers, to pay the Order Flow Providers $45,000 for that month. Assuming that the 90,000 represents 30,000 specialist contracts, 30,000 total ROT and Directed ROT[32] contracts (comprised of 10,000 ROT contracts, 10,000 Directed ROT "A" contracts, 7,000 Directed ROT "B" contracts, and 3,000 Directed ROT "C" contracts), and 30,000 contracts from firms, broker-dealers and other customers, the specialist would be able to request reimbursement of up to 50% (30,000 ROT and Directed ROT contracts/60,000, which is comprised of 30,000 ROT and Directed ROT contracts + 30,000 specialist contracts) of the amount paid ($45,000 × 50% = $22,500). Because the ROTs and Directed ROTs would have paid a total of $18,000 (30,000 contracts × $.60 per contract into the payment for order flow fund for that month, the specialist may collect up to $18,000 of its $22,500 reimbursement request.

Assuming, however, that Directed ROT "B" elects not to be assessed a payment for order flow fee and has notified the Exchange pursuant to the requirements set forth above, then the specialist would be obligated to pay for 83,000 contracts (or $41,500 (83,000 × $.50 per contract)). The ROTs and Directed ROTs "A" and "C" would have paid $13,800 (23,000 contracts × $.60 per contract) into the payment for order flow fund for that option for that month. Thus, the amount the specialist would be able to collect is up to $13,800 of its $20,750 ($41,500 × 50%) reimbursement request.

If all Directed ROTs have notified the Exchange that they elect not to be assessed a payment for order flow fee in the above-referenced example, then the specialist would be obligated to pay for 70,000 contracts (or $35,000 (70,000 × $.50 per contract)). The ROTs would have paid $6,000 (10,000 contracts × $.60 per contract) into the payment for order flow fund for that option for that month. Thus, the amount the specialist may collect is up to $6,000 of its $17,500 ($35,000 × 50%) reimbursement request.

The Exchange states that, consistent with current practice, any excess funds (funds remaining after reimbursement requests are processed) for a particular month that are not requested by the participating specialist would be returned to the ROTs and Directed ROTs (who have opted to pay the payment for order flow fee) by option who have been charged payment for order flow fees. The excess funds would be reflected as a credit on the monthly invoices and rebated on a pro rata, option-by-option, basis to the ROTs and Directed ROTs who were billed payment for order flow charges for that same month.

The Exchange states that participating specialists would not be able to receive more than the payment for order flow amount billed and collected in a given month.

In addition, a 500-contract cap per individual cleared side of a transaction would continue to be imposed. The Exchange states that it would also continue to implement a quality of execution program. Further, the Exchange may audit a specialist's payments to Order Flow Providers to verify the use and accuracy of the payment for order flow funds remitted to the specialists based on their certification form.[33]

This proposal would be in effect for trades settling on or after July 1, 2005 and would remain in effect as a pilot program that is scheduled to expire on May 27, 2006, the same date as the one-year pilot program in effect in connection with Directed Orders.[34]

Below is the text of the proposed rule change, as amended. Proposed new

[31] The Exchange states that, consistent with the current practice regarding specialist units, specialists would be given instructions as to when the certification forms are required to be submitted. While all determinations concerning the amount that would be paid for orders and which order flow providers shall receive these payments are made by the specialists, the specialists would provide to the Exchange on an Exchange form certain information as required by the Exchange, which may include what firms they paid for order flow, the amount of the payment and the price paid per contract.

[32] For purposes of this example, the Directed ROTs have elected to be assessed the payment for order flow fee by notifying the Exchange in writing, consistent with the notification requirements previously discussed.

[33] *See* Exchange Rule 760.

[34] *See supra* note 8.

language is in *italics*; proposed deletions are in [brackets].

* * * * *

Summary of Equity Option Charges (P. 3/6)

For any top 120 option listed after February 1, 2004 and for any top 120 option acquired by a new specialist unit** within the first 60-days of operations, the following thresholds will apply, with a cap of $10,000 for the first 4 full months of trading per month per option provided that the total monthly market share effected on the Phlx in that top 120 Option is equal to or greater than 50% of the volume threshold in effect:

	National market share (percent)
First full month of trading	0
Second full month of trading	3
Third full month of trading	6
Fourth full month of trading	9
Fifth full month of trading (and thereafter)	12

** A new specialist unit is one that is approved to operate as a specialist unit by the Options Allocation, Evaluation, and Securities Committee on or after February 1, 2004 and is a specialist unit that is not currently affiliated with an existing options specialist unit as reported on the member organization's Form BD, which refers to direct and indirect owners, or as reported in connection with any other financial arrangement, such as is required by Exchange Rule 783.

Real-Time Risk Management Fee

$.0025 per contract for firms/members receiving information on a real-time basis.

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES*(1)(2)

Registered option trader**+	Per contract
QQQ (NASDAQ–100 Index Tracking Stock℠)	[$1.00] *$0.75*
Remaining Equity Options, except FXI Options	[$0.40] *$0.60*

See Appendix A for additional fees.

*Assessed on transactions resulting from customer orders, subject to a 500-contract cap, per individual cleared side of transaction

**Any excess payment for order flow funds billed but not reimbursed to specialists will be returned to the applicable ROTs *and Directed ROTs who have elected to be assessed a payment for order flow fee* (reflected as a credit on the monthly invoices) and distributed on a pro rata basis.

+Only incurred when the specialist [or Directed ROT] elects to participate in the payment for order flow program.

(1) For orders delivered electronically: [(a)] Assessed on ROTs [and Directed ROTs] when the specialist unit opts into the program. *ROTs who receive Directed Orders may elect to be assessed the payment for order flow fee on customer orders directed to and executed by them* [; (b) assessed on specialists and ROTs when a Directed ROT opts into the program]

(2) *No payment for order flow fees will be assessed on orders that are not delivered electronically* [For orders not delivered electronically, the above-referenced fees are assessed on all ROTs, including Directed ROTs, and specialists if two or more specialist/ROTs have elected to participate in the Exchange's payment for order flow program.]

* * * * *

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 Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposal, as amended, is to adopt a competitive Exchange payment for order flow program. Payment for order flow programs are in place at each of the other options exchanges in varying amounts and covering various options. The Exchange states that the funds generated by the Exchange's payment for order flow fee are intended to be used to reimburse specialists for order flow payments made to order flow providers for equity options delivered to the Exchange or when Directed ROTs elect to be charged a payment for order flow fee, the specialists, based on the Exchange's understanding, may make the payment for order flow payment to the Order Flow Provider on behalf of the Directed ROT. The Exchange believes that this proposal should also allow Directed ROTs to make arrangements with Order Flow Providers who do not accept payment for order flow. The Exchange believes that, in today's competitive environment, changing its payment for order flow program to compete more directly with other options exchanges is important and appropriate.

In making these proposed modifications to the Exchange's payment for order flow program, the Exchange believes that the modified program would better facilitate both specialists' and Directed ROTs' existing business relationships with Order Flow Providers, while minimizing the existing administrative burdens on both the specialists and Directed ROTs and the Exchange. Additionally, the Exchange believes that the proposed program would simplify the reimbursement process by having only one reimbursement request processed for each equity option, rather than the multiple requests under the previous program and, when Directed ROTs elect to be charged a payment for order flow fee, by having consolidated payments to Order Flow Providers.

2. Statutory Basis

The Exchange believes that its proposal, as amended, is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[36] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Phlx's members and is designed to enable the Exchange to compete with other markets in attracting customer order flow. Because the Exchange payment for order flow fees are collected only from member organizations respecting customer transactions delivered electronically, the Phlx believes that there is a direct and fair correlation between those members who fund the payment for order flow fee program and those who receive the benefits of the Exchange program. The Exchange believes that participating specialists, Directed ROTs, and ROTs potentially benefit from additional customer order flow. In addition, the Phlx believes that the proposed Exchange payment for order flow fees would serve to enhance the competitiveness of the Phlx and its members and that this proposal therefore is consistent with and furthers the objectives of the Act, including Section 6(b)(5) thereof,[37] which requires the rules of exchanges to be designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that attracting more order flow to the Exchange, should, in turn, result in increased liquidity, tighter markets, and

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(4)–(5).

[37] 15 U.S.C. 78f(b)(5).

more competition among Exchange members.

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 inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act [38] and Rule 19b–4(f)(2) [39] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[40]

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–Phlx–2005–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–44. 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, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–44 and should be submitted on or before August 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4076 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

[38] 15 U.S.C. 78s(b)(3)(A)(ii).

[39] 17 CFR 240.19b–4(f)(2).

[40] The effective date of the original proposed rule change is July 1, 2005, the effective date of Amendment No. 1 is July 20, 2005, and the effective date of Amendment No. 2 is July 21, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 21, 2005, the date on which the Exchange submitted Amendment No. 2.

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52102; File No. SR–Phlx–2005–38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Disclaimer of Warranties by Lehman Brothers Inc.

July 21, 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 June 14, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On July 13, 2005, the Exchange amended the proposed rule change ("Amendment No. 1").[3] The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) 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 adopt Phlx Rule 1106A (Lehman Brothers Inc. Indexes) to add a disclaimer regarding data from Lehman Brothers Inc. Indexes ("Indexes"),[6] express or implied warranties of merchantability or fitness, and liability for damages or claims. The Phlx has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[7] The text of the proposed rule change, as amended, is below. Proposed new language is *italicized.*

* * * * *

Rule 1106A.

Lehman Brothers Inc. Indexes

Lehman Brothers Inc. makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto in connection with the trading of any option contract on exchange traded funds based thereon, or for any other purpose. Lehman Brothers Inc. does not guarantee the accuracy and/or completeness of any Lehman Brothers Inc. index, or any opening, intra-day or closing value therefor, or any data included therein or related thereto. Lehman Brothers Inc. makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made minor technical changes to the proposed rule text.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Lehman and Lehman Brothers Inc. are marks owned by Lehman Brothers Inc.

[7] 17 CFR 240.19b–4(f)(6)(iii).

any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on exchange traded funds based thereon. In no event shall Lehman Brothers Inc. have any liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of any Lehman Brothers Inc. index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract on exchange traded funds based thereon, or arising out of any errors or delays in calculating or disseminating any such index.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to adopt new Phlx Rule 1106A, which applies to Indexes that were recently licensed by Lehman Brothers Inc. ("Lehman") to the Exchange. The Exchange is proposing to establish new Phlx Rule 1106A as required by the licensing agreement with Lehman that allows the Exchange to license, trade, and market options on five iShares products.[8]

Proposed Phlx Rule 1106A, which is similar in nature to disclaimers of index providers at current Phlx Rules 1104A (SIG Indices, LLLP) and 1105A (Standard and Poor's® Index),[9] establishes, among other things, disclaimers regarding data from the Indexes including no guarantee of accuracy and/or completeness, regarding express or implied warranties of merchantability or fitness for a particular purpose, and regarding liability for damages, claims, losses or delays.

The Exchange believes that proposed Phlx Rule 1106A, being similar in concept to current Phlx Rules 1104A and 1105A as well as rules of other options exchanges,[10] should put Lehman on similar footing with other licensors of options on indexes to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[11] in general, and with Section 6(b)(5) of the Act,[12] in particular, in that it is designed 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. The Exchange believes that the proposed rule should encourage Lehman to continue to maintain Indexes so that options on the respective indexes may be traded on the Exchange, thereby providing investors with enhanced investment opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder[14] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx satisfied the five-day pre-filing requirement.

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.[16] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow for the immediate implementation of a rule similar to rules already in place at the Phlx and at other options exchanges. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[8] Pursuant to the licensing agreement and Exchange Rule 1009, the Exchange currently lists options on iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 year Treasury Bond Fund (IEF), iShares Lehman 20+ Year Treasury Bond Fund (TLT), iShares Lehman Aggregate Bond Fund (AGG), and iShares Lehman TIPS Bond Fund (TBK). The products are sponsored by Barclays Global Investors.

[9] The Exchange noted in its filings to adopt Phlx Rules 1104A and 1105A that the proposed disclaimers were appropriate given that they were similar to disclaimer provisions of American Stock Exchange ("Amex") Rule 902C relating to indexes underlying options listed on that exchange. *See* Securities Exchange Act Release Nos. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (SR–Phlx–2003–21) (adopting Phlx Rule 1004A regarding SIG indices) and 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005) (SR–2005–24) (adopting Phlx Rule 1105A regarding S&P 500 and expanding Phlx Rule 1104A).

[10] *See* disclaimers and limitation of liability at Amex Rule 902C and at Chicago Board Options Exchange, Inc. Rule 24.14.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[18]

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–Phlx–2005–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–38. 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 the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–38 and should be submitted on or before August 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4077 Filed 7–29–05; 8:45 am]

BILLING CODE 8010–01–P

[18] The effective date of the original proposal is June 14, 2005, and the effective date of the amendment is July 13, 2005. For purposes of calculating the 30-day operative delay and the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on July 13, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 30, 2005.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Veronica Dymond, Public Affairs Specialist, Office of Communications and Public Liaison, Small Business Administration, 409 3rd Street SW., Suite 7450, Wash, DC 20416

FOR FURTHER INFORMATION CONTACT: Veronica J. Dymond, Public Affairs Specialist, 202–205–6746 *veronica.dymond@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.sba*

SUPPLEMENTARY INFORMATION:

Title: "Small Business Week Award Nominees."

Description of Respondents: Entrepreneurs and Small Business owners nominated for SBA's National Small Business Week awards Nominations are received by SBA's district, regional, and headquarters offices.

Form No: 2273.

Annual Responses: 600.

Annual Burden: 450.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–15116 Filed 7–29–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5105]

Cultural Property: Italy; Pre-Classical, Classical, and Imperial Archaelogical Material: U.S. Import Restrictions; Memorandum of Understanding

Notice of Proposal to Extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy.

The Government of the Republic of Italy has informed the Government of the United States of its interest in an extension of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy.

Pursuant to the authority vested in the Assistant Secretary for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Memorandum of Understanding is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of this Memorandum of Understanding, the designated list of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/culprop.*

Dated: July 25, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–15153 Filed 7–29–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5106]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Thursday, September 8, 2005, from approximately 9 a.m. to 5:30 p.m., and on Friday, September 9, 2005, from

approximately 9 a.m. to 3 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a proposal to extend the "Agreement between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy." The purpose of this review is for the Committee to make findings and a recommendation regarding the proposal to extend this Agreement.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The U.S.-Italy Agreement, the designated list of restricted categories, the text of the Act and related information may be found at *http://exchanges.state.gov/culprop.*

Portions of the meeting on September 8 and 9 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). However, on September 8, the Committee will hold an open session, approximately 1 p.m. to 3:30 p.m., to receive oral public comment on the proposal to extend the Agreement. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 453–8800 by Wednesday, August 24, 2005, 5 p.m. (EST) to arrange for admission, as seating is limited.

Those who wish to make oral presentations should request to be scheduled and submit a written text of the oral comments by Thursday August 24, 2005, to allow time for distribution of these comments to Committee members for their review prior to the meeting. Oral comments will be limited to five minutes each to allow time for questions from members of the Committee and must specifically address the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above.

The Committee also invites written comments and asks that they be submitted no later than August 24, 2005. All written materials, including the written texts of oral statements, should be faxed to (202) 260–4893, if 5 pages or less. Written comments greater than five pages must be mailed (20 copies) to Cultural Heritage Center, Department of State Annex 44, 301 4th St., SW., Rm. 334, Washington, DC 20547. Express mail is recommended for timely delivery.

Dated: July 25, 2005.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–15154 Filed 7–29–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 15, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–21841.

Date Filed: July 12, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 2, 2005.

Description: Application of Comlux Aviation AG requesting a foreign air carrier permit to conduct: (1) Charter foreign air transportation of persons, property and mail between any point or points in Switzerland and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Switzerland for the purpose of carrying local traffic between Switzerland and the United States; and (2) other charters between third countries and the United States.

Renee V. Wright

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–15126 Filed 7–29–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8901

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 8901, Information on Qualifying Children Who Are Not Dependents.

DATES: Written comments should be received on or before September 30, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information on Qualifying Children Who Are Not Dependents.

OMB Number: 1545–XXXX.

Form Number: 8901.

Abstract: Because of changes made to Internal Revenue Code Sections 24 and 152, it is now possible to have a child who is a qualifying child for purposes of the child tax credit but who is not a dependent. Under the revised section 24, the term "qualifying child" for purposes of the child tax credit means a qualifying child of the taxpayer (as defined in Sec. 152(c)) who has not attained age 17.

Current Actions: This is a new form for 2005. 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.

Estimated Number of Respondents: 9,000.

Estimated Time Per Respondent: 33 minutes.

Estimated Total Annual Burden Hours: 4,950.

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: July 22, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–4075 Filed 7–29–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Voluntary Dissolution

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before September 30, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia Goings, Financial Analyst, Examinations and Supervision Operations, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Voluntary Dissolution.

OMB Number: 1550–0066.

Form Number: N/A.

Regulation requirement: 12 CFR 546.4.

Description: 12 CFR 546.4 provides for federal associations to voluntarily dissolve through the submission of a statement of reasons and plan of dissolution. Approval is required by the board of directors, OTS, and the association's members. Plans for dissolution may be denied if OTS believes the plan is not in the best interests of concerned parties.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: Plan for dissolution—80 hours; disclosure to customers (averaging 4,140 customers per respondent)—ten minutes per customer.

Estimated Total Burden: 3,080.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono, Acting Director.

[FR Doc. 05–15136 Filed 7–29–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and

its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 31, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0362." Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0362" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Claim Under Loan Guaranty, VA Form 26–1874.

b. Claim Form—Adjustable Rate Mortgages, VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Extension of a currently approved collection.

Abstract:

a. Lenders and holders of VA guaranteed home loans use VA Form 26–1874 as notification to VA of default loans.

b. VA Form 26–1874a is used as an attachment to VA Form 26–1874 when filing a claim under the loan guaranty resulting from the termination of an Adjustable Rate Mortgage Loan. The information obtained on both forms is essential to VA in determining the amount owed to the holder under the guaranty.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 19, 2005, at page 20420.

Affected Public: Business or other for profit.

Estimated Annual Burden:

a. VA Form 26–1874—25,806 hours.

b. VA Form 26–1874a—333 hours.

Estimated Average Burden Per Respondent:

a. VA Form 26–1874—60 minutes.

b. VA Form 26–1874a—20 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents:

a. VA Form 26–1874—25,806.

b. VA Form 26–1874a—1,000.

Dated: July 21, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service,

[FR Doc. E5–4070 Filed 7–29–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0320]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 31, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0320."

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0320" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

OMB Control Number: 2900–0320.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 26–1849 documents a legal agreement between parties other than VA when appropriate funds must be set aside for completion of exterior onsite improvements. The builder/seller is required to deposit at least one and one-half times the cost of completing the improvements into an escrow account. The escrow allows the veteran to occupy the property when exterior improvements are postponed due to unforeseen circumstances such as adverse weather or other specified unavoidable conditions.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 28, 2005, at page 15689.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Annual Burden: 625 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,250.

Dated: July 21, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–4071 Filed 7–29–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 70, No. 146
Monday, August 1, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 258, 261, and 264

[RCRA–2002–0025; FRL–7916–1]

RIN 2050–AE41

Waste Management System; Testing and Monitoring Activities; Final Rule: Methods Innovation Rule and SW–846 Final Update IIIB

Correction

In rule document 05–10197 beginning on page 34538 in the issue of Tuesday, June 14, 2005, make the following corrections:

1. On page 34538, in the table, in the "Available portions of SW–846" column, in the third line from the bottom, "IIB (pdf electronic copy)" should read "IIIB (pdf electronic copy)".

Appendix I to Part 258—[Corrected]

2. On page 34555, in **Appendix I to Part 258—Constituents for Detection Monitoring**, in the table, under the heading "Common name [1]", in entry (17), "Acrylonitrile 1" should read "Acrylonitrile".

Appendix II to Part 258—[Corrected]

3. On page 34558, in **Appendix II to Part 258—List of Hazardous Inorganic and Organic Constituents**, the table is corrected in part to read as follows:

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
* * * * * * *		
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine, α,α-dimethyl-
* * * * * * *		
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-,(1aα,1bβ,2α,5α,5aβ,6β,6aα)
* * * * * * *		

Appendix IX to Part 261—[Corrected]

4. On page 34568, in **Appendix IX to Part 261—Wastes Excluded Under §§260.20 and 260.22**, in the table, in entry (5), in the second paragraph, the table is corrected in part to read as follows:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
	* * * * * * *	
		Benz(a)anthracene—1 × 10^{-4}, Benzo(a)pyrene—4 × 10^{-5}, Benzo(b)fluoranthene—2 × 10^{-4}, Chloroform—0.07, * * * * *
	* * * * * * *	

5. On the same page, in the same appendix, in the same table, in the "Waste description" column, in entry (3) *Verification Testing Requirements:*, in the 12th line, "Condition Texas Eastman" should read "Condition (4), Texas Eastman".

Appendix IX to Part 264—[Corrected]

6. On page 34582, in **Appendix IX to Part 264—Groundwater Monitoring List**, in the table, under the heading "Common name [1]", in the last line of the column, "2,4-D; 2,4-Dichlorophenoxyacetic acids" should read "2,4-D; 2,4-Dichlorophenoxyacetic acid".

7. On page 34584, in the same appendix, in the same table, in the "Chemical abstracts service index name [3]" column, in the 35th line, "O,O-dimethyl O=(4-nitrophenyl) ester" should read "O,O-dimethyl O-(4-nitrophenyl) ester"

[FR Doc. C5–10197 Filed 7–29–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 1, 2005

Part II

Environmental Protection Agency

40 CFR Part 51

Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7944–6]

RIN 2060–AN22

Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On July 1, 1999, EPA promulgated regulations to address regional haze (64 FR 35714). These regulations were challenged twice. On May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the regional haze rule in part and sustaining it in part. *American Corn Growers Ass'n* v. *EPA*, 291 F.3d 1 (D.C. Cir. 2002). On June 15, 2005, we finalized a rule addressing the court's ruling in that case. On February 18, 2005, the U.S. Court of Appeals for the District of Columbia Circuit issued another ruling vacating the regional haze rule in part and sustaining it in part. *Center for Energy and Economic Development* v. *EPA*, No. 03–1222, (D.C. Cir. Feb. 18, 2005) ("CEED v. EPA"). In this case, the court granted a petition challenging provisions of the regional haze rule governing the optional emissions trading program for certain western States and Tribes (the "WRAP Annex Rule"). Today's proposed rule would revise the provisions of the regional haze rule governing alternative trading programs, and would provide additional guidance that is needed.

DATES: Comments must be received on or before September 17, 2005. A public hearing will be held on August 17, 2005, in Denver, Colorado. Please refer to the section on **SUPPLEMENTARY INFORMATION** for more information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0076 by one of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

E-mail: *http://www.epa.gov/edocket*.

Fax: 202–566–1741.

Mail: OAR Docket, Environmental Protection Agency, Mailcode: B102, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.

Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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–2002–0076. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

For additional instructions on submitting comments, go to unit II of the **SUPPLEMENTARY INFORMATION** section of this document.

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 OAR 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 OAR Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Kathy Kaufman at 919–541–0102 or by e-mail at *kaufman.kathy@epa.gov* or Todd Hawes at 919–541–5591 or by e-mail at *hawes.todd@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* This proposed rule will affect the following: State and local permitting authorities and Indian Tribes containing major stationary sources of pollution affecting visibility in federally protected scenic areas.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This list gives examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in Part II of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the people listed in the preceding section.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

A. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

B. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

C. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

D. Describe any assumptions and provide any technical information and/or data that you used.

E. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

F. Provide specific examples to illustrate your concerns, and suggest alternatives.

G. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

H. Make sure to submit your comments by the comment period deadline identified.

Public Hearing

The EPA will hold one public hearing on today's proposal. The hearing will be on August 17, 2005, at the EPA Region 8 Office Conference Center (second floor), 999–18th St. Suite 300, Denver, CO 80202–2466. Because the hearing is being held at U.S. government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. The public hearings will begin at 8 a.m. and continue until 12 p.m. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD–ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at the hearing, please notify Kathy Kaufman at 919–541–0102 or by e-mail at *kaufman.kathy@epa.gov* or Todd Hawes at 919–541–5591 or by e-mail at *hawes.todd@epa.gov* by August 7. Persons wishing to present oral testimony that have not made arrangements in advance should register by 9 a.m. the day of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

Outline. The contents of today's preamble are listed in the following outline.

I. Overview and Background
II. Revisions to Regional Haze Rule § 51.308(e)(2)
  A. Revisions Related to the Demonstration That an Alternative Program Makes Greater Reasonable Progress than BART
  B. State Options for Complying with § 51.308(e)(2)(i) as Proposed
  C. Analysis under § 51.308(e)(2) when an independent requirement determines the level of emission reductions needed
  D. Revisions to § 51.308(e)(2) to standardize and clarify the minimum elements of emissions trading programs in lieu of BART
III. Revisions to Regional Haze Rule § 51.309
  A. Background
  B. Proposed Regulatory Framework for States choosing to implement the GCVTC/WRAP Strategies
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  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 Risks and Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use.
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Overview and Background

Today's rulemaking provides the following changes to the regional haze regulations:

(1) revised regulatory text in § 51.308(e)(2)(i) in response to the CEED court's remand, to remove the requirement that the determination of the BART "benchmark" be based on cumulative visibility analyses, and to clarify the process for making such determinations, including the application of BART presumptions for EGUs as contained in Appendix Y to 40 CFR 51.

(2) new regulatory text in § 51.308(e)(2)(vi), to provide minimum elements for cap and trade programs in lieu of BART,

(3) revised regulatory text in § 51.309, to reconcile the optional framework for certain western States and Tribes to implement the recommendations of the Grand Canyon Visibility Transport Commission (GCVTC) with the *CEED* decision.

How This Preamble Is Structured. Section I provides background on the Clean Air Act (CAA) BART requirements as codified in the regional haze rule, on the DC Circuit Court decision which remanded parts of the rule, and on the June 2005 BART rule. Section II discusses specific issues relating to the proposed revisions to § 51.308(e)(2) of the Regional Haze Rule governing alternatives to source-by-source BART. Section III discusses specific issues relating to the proposed revisions to § 51.309 of the Regional Haze Rule pertaining to the optional emissions trading program for certain western States and Tribes. Section IV provides a discussion of how this rulemaking complies with the requirements of Statutory and Executive Order Reviews.

The Regional Haze Rule and BART Guidelines

In 1999, we published a final rule to address a type of visibility impairment known as regional haze (64 FR 35714, July 1, 1999). The regional haze rule requires States to submit implementation plans (SIPs) to address regional haze visibility impairment in 156 Federally-protected parks and wilderness areas. These 156 scenic areas are called "mandatory Class I Federal areas" in the Clean Air Act (CAA),[1] but are referred to simply as "Class I areas" in today's rulemaking. The 1999 rule was issued to fulfill a long-standing EPA commitment to address regional haze under the authority and requirements of sections 169A and 169B of the CAA.

As required by the CAA, we included in the final regional haze rule a requirement for BART for certain large stationary sources that were put in place between 1962 and 1977. We discussed these requirements in detail in the preamble to the final rule (64 FR 35737–35743). The regulatory requirements for BART were codified at 40 CFR 51.308(e), and in definitions that appear in 40 CFR 51.301.

In the preamble to the regional haze rule, we committed to issuing further guidelines to clarify the requirements of the BART provision. We announced

[1] See, e.g. CAA Section 169(a)(1).

these final guidelines on June 15, 2005.[2] The purpose of the BART guidelines is to assist States as they identify which of their BART-eligible sources should undergo a BART analysis (i.e., which are "sources subject to BART"), and select controls in light of the statutory factors listed above ("the BART determination").

We explained in the preamble to the 1999 regional haze rule that the BART requirements in section 169A(b)(2)(A) of the CAA demonstrate Congress' intent to focus attention directly on the problem of pollution from a specific set of existing sources (64 FR 35737). The CAA requires that any of these existing sources "which, as determined by the State, emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility [in a Class I area]," shall install the best available retrofit technology for controlling emissions.[3] In determining BART, the CAA requires the State to consider several factors that are set forth in section 169A(g)(2) of the CAA, including the degree of improvement in visibility which may reasonably result from the use of such technology.

The regional haze rule addresses visibility impairment resulting from emissions from a multitude of sources located across a wide geographic area. Because the problem of regional haze is caused in large part by the long-range transport of emissions from multiple sources, and for certain technical and other reasons explained in that rulemaking, we adopted an approach that required States to look at the contribution of all BART sources to the problem of regional haze in determining both applicability and the appropriate level of control. Specifically, we had concluded that if a source potentially subject to BART is located in an area from which pollutants may be transported to a Class I area, that source "may reasonably be anticipated to cause or contribute" to visibility impairment in the Class I area. Similarly, we also concluded that in weighing the factors set forth in the statute for determining BART, the States should consider the collective impact of BART sources on visibility. In particular, in considering the degree of visibility improvement that could reasonably be anticipated to result from the use of such technology, we stated that the State should consider the degree of improvement in visibility that would result from the cumulative impact of applying controls to all sources subject to BART. We concluded that the States should use this analysis to determine the appropriate BART emission limitations for specific sources.[4]

The 1999 regional haze rule also included § 51.309, containing the strategies developed by the Grand Canyon Visibility Transport Commission (GCVTC). Certain western States and Tribes were eligible to submit implementation plans under § 51.309 as an alternative method of achieving reasonable progress for Class I areas which were covered by the GCVTC's analysis—i.e., the 16 Class I areas on the Colorado Plateau. In order for States and Tribes to be able to utilize this section, however, the rule provided that EPA must receive an "Annex" to the GCVTC's final recommendations. The purpose of the Annex was to provide the specific provisions needed to translate the GCVTC's general recommendations for stationary source SO_2 reductions into an enforceable regulatory program. The rule provided that such an Annex, meeting certain requirements, be submitted to EPA no later than October 1, 2000. See §§ 51.309(d)(4) and 51.309(f).

American Corn Growers v. EPA

In *American Corn Growers* v. *EPA*, 291 F.3d 1 (DC Cir. 2002), industry petitioners challenged EPA's interpretation of the BART determination process and raised other challenges to the rule. The court in *American Corn Growers* concluded that the BART provisions in the 1999 regional haze rule were inconsistent with the provisions in the CAA "giving the states broad authority over BART determinations." 291 F.3d at 8. Specifically, with respect to the test for determining whether a source is subject to BART, the court held that the method EPA had prescribed for determining which eligible sources are subject to BART illegally constrained the authority Congress had conferred on the States. *Id.* The court did not decide whether the general collective contribution approach to determining BART applicability was necessarily inconsistent with the CAA. *Id.* at 9. Rather, the court stated that "[i]f the [regional haze rule] contained some kind of a mechanism by which a state could exempt a BART-eligible source on the basis of an individualized contribution determination, then perhaps the plain meaning of the Act would not be violated. But the [regional haze rule] contains no such mechanism." *Id.* at 12.

The court in American Corn Growers also found that our interpretation of the CAA requiring the States to consider the degree of improvement in visibility that would result from the cumulative impact of applying controls in determining BART was inconsistent with the language of the Act. 291 F.3d at 8. Based on its review of the statute, the court concluded that the five statutory factors in section 169A(g)(2) "were meant to be considered together by the states." *Id.* at 6. The final rule signed on June 15, 2005 responded to the *American Corn Growers* court's decision on the BART provisions by amending the regional haze rule at 40 CFR 51.308 and by finalizing changes to the BART guidelines at 40 CFR part 51, appendix Y.[5] These changes eliminate the previous constraint on State discretion and provide States with appropriate techniques and methods for determining which BART-eligible sources "may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." In addition, the revised regulations list the visibility improvement factor with the other statutory BART determination factors in § 51.308(e)(1)(A), so that States will be required to consider all five factors, including visibility impacts, on an individual source basis when making each individual source BART determination.

The Annex Rule

In a rule dated June 5, 2003, EPA approved the WRAP's Annex to the GCVTC report, which had been submitted by the WRAP prior to October 1, 2000, in accordance with § 51.309(f). 68 FR 33764, June 5, 2003. In this action, referred to as the "Annex rule," EPA approved the quantitative SO_2 emission reduction milestones and the detailed provisions of the backstop market trading program developed by the WRAP as meeting the requirements of § 51.309(f). EPA therefore codified the Annex provisions in § 51.309(h). Subsequently, five States and one local agency submitted SIPs developed to comply with all of § 51.309, including the Annex provisions at § 51.309(h). In accordance with § 51.309(c) these SIPs were submitted prior to December 31, 2003.

[2] See *http://www.epa.gov/visibility/actions.html#bart1*.

[3] CAA Sections 169A(b)(2) and (g)(7).

[4] See 66 FR 35737–35743 for a discussion of the rationale for the BART requirements in the 1999 regional haze rule.

[5] *http://www.epa.gov/visibility/actions.html#bart1*.

Center for Energy and Economic Development v. EPA

After the May 2004 reproposal of the BART guidelines, the DC Circuit decided another case where BART provisions were at issue, *Center for Energy and Economic Development* v. *EPA*, No. 03–1222, (D.C. Cir. Feb. 18, 2005) ("CEED v. EPA"). In this case, the court granted a petition challenging provisions of the regional haze rule governing the optional emissions trading program for certain western States and Tribes (the "WRAP Annex Rule").

The court in *CEED* affirmed our interpretation of CAA 169A(b)(2) as allowing for non-BART alternatives where those alternatives are demonstrated to make greater progress than BART. (CEED, slip. op. at 13). The court, however, took issue with provisions of the regional haze rule governing the methodology of that demonstration. Specifically, 40 CFR 51.308(e)(2) required that visibility improvements under source-specific BART—the benchmark for comparison to the alternative program—must be estimated based on the application of BART controls to all sources subject to BART. (This section was incorporated into the WRAP Annex rule by reference at 40 CFR 51.309(f)). The court held that we could not require this type of group BART approach, which was vacated in *American Corn Growers* in a source-specific BART context, even in an alternative trading program in which State participation was wholly optional.

The BART guidelines as proposed in May 2004 contained a section offering guidance to States choosing to address their BART-eligible sources under the alternative strategy provided for in 40 CFR 51.308(e)(2). This guidance included criteria for demonstrating that the alternative program achieves greater progress towards eliminating visibility impairment than would BART.

In light of the DC Circuit's decision in CEED, we did not address alternative programs in the rulemaking finalizing the BART guidelines. However we note that our authority to address BART through alternative means was upheld in CEED, and we remain committed to providing States with that flexibility. Today's proposed revisions to the Regional Haze Rule, which responds to the holding in CEED, would provide that flexibility that States need to implement alternatives to BART.

Overview of Proposed Changes to §§ 51.308(e)(2) and 51.309 of the Regional Haze Rule

The EPA continues to support State efforts to develop trading programs and other alternative strategies to accomplish the requirements of the regional haze rule, including BART. We believe such strategies have the potential to achieve greater progress towards the national visibility goals, and to do so in the most cost effective manner practicable. Therefore, we are proposing the following amendments to the regional haze rule at §§ 51.308(e)(2) and 51.309 to enable States to continue to develop and implement such programs. We request comment on all of the provisions in this proposed rule.

First, we are proposing amending the generally applicable provisions in § 51.308(e)(2) prescribing the type of analysis used to determine emissions reductions achievable from source-by-source BART, for purposes of comparing to the alternative program. The proposed amendments would: reconcile the methodology with the court's decision in *CEED* v. *EPA;* provide additional guidance to States and Tribes regarding the minimum elements of an acceptable cap and trade program; and provide for consistent application of the BART guidelines for EGUs between source-by-source programs and alternative cap and trade programs.

Second, we are proposing amendments to § 51.309 to enable certain western States and Tribes to continue to utilize the strategies contained in this section as an optional means to satisfy reasonable progress requirements for certain Class I areas, for the first long-term planning period. These changes would provide States and Tribes with an opportunity to revisit the details of the backstop SO_2 emissions trading program without being required to assess visibility on a cumulative basis when determining emissions reductions achievable by source-by-source BART.

II. Revisions to Regional Haze Rule Section § 51.308(e)(2)

A. Revisions Related to the Demonstration That an Alternative Program Makes Greater Reasonable Progress Than BART

The DC Circuit's decision in *CEED* v. *EPA* prohibits the Agency from requiring that a BART alternative trading program be compared to a source-by-source BART program by assessing the effect on visibility of the source-by-source BART program on a cumulative basis.

The general provision in the regional haze rule authorizing alternative programs in lieu of BART had required such an approach. See 40 CFR 51.308(e)(2)(2004). The general provision, § 51.308(e)(2), was incorporated by reference into the WRAP-specific section of the rule at § 51.309(f)(1)(I).

Section 51.308(e)(2)(i) specified the methodology for comparing a BART alternative trading program against source-by-source BART. This provision required States to demonstrate that a "trading program or other alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State." The methodology consisted of three steps, quoted here in full:

> (A) A list of all BART eligible sources within the State.
>
> (B) An analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each source within the State subject to BART. In this analysis, the State must take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source. The best system of continuous emission control technology and the above factors may be determined on a source category basis. The State may elect to consider both source-specific and category-wide information, as appropriate, in conducting its analysis.
>
> (C) An analysis of the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emission reductions achievable from all such sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the analysis conducted under § 51.308(e)(2)(i)(B).

Although the DC Circuit had found this methodology to be inconsistent with the statutory requirements for source-by-source BART, when EPA revised the regional haze rule to incorporate the WRAP Annex in 2003, we did not believe that the decision in *American Corn Growers* in any way affected our ability to approve alternative measures such as trading programs. In reviewing our approval of the Annex submitted by the WRAP, however, the *CEED* court stated that EPA could not "under section 309 require states to exceed invalid emission reductions." The court granted the petition challenging the Annex because, consistently with § 51.308(e)(2)(i), EPA's regulations had required States to consider "the impact of all emissions reductions to estimate visibility progress."

Based on our review of the *CEED* court's ruling, we believe that our regulations, which required an analysis of emissions reductions achievable for each source that was bifurcated into an individual source assessment for the first four of the five BART factors identified in the CAA for States to consider in BART determinations,[6] and a cumulative source assessment for the fifth factor of visibility improvement, must be revised.

Revision to § 51.308(e)(2)(i) To Address CEED

We propose to revise § 51.308(e)(2)(i) to provide that BART determinations be made in the trading program context in the same manner as in the source-by-source context. This would be accomplished by a cross reference to § 51.308(e)(1) in proposed § 51.308(e)(2)(i)(C). Section 51.308(e)(1)(A), as contained in the recent action finalizing the BART guidelines, provides that the degree of visibility improvement be considered along with the other statutory factors when making BART determinations. Appendix Y to part 51 sets forth the process by which States should assess visibility improvement in BART determinations. Thus, with this amendment, the regional haze rule would not impose a bifurcated methodology for defining the level of emission reductions needed by an alternative program in lieu of BART. We believe this revision is the only regulatory change necessary to comply with the court's decision in CEED.[7] The potential range of options States would have for performing analyses in compliance with this provision is discussed in section B below.

Revisions to Demonstration Framework

The other proposed changes to § 51.308(e)(2)(i) are intended to provide a clearer framework for the demonstration that an alternative program provides greater reasonable progress than BART. Specifically, we propose revising paragraph (D) to require States to project visibility improvements resulting from the alternative program, and adding a new paragraph (E) to require that States compare the visibility results from source by source BART and the alternative program, using the test criteria in § 51.308(e)(3).

We are also clarifying the requirement in existing § 51.308(e)(2)(i)(C) that a State analyze "the degree of visibility improvement that would be achieved in each mandatory Class I Federal area as a result of the emissions reductions achievable from all such sources subject to BART located within the region that contributes to visibility impairment in the Class I area, based on the analysis conducted under [§ 51.308(e)(2)(i)(B)]." We believe this language is somewhat ambiguous, as it could be read to require an analysis for every Federal mandatory Class I area nationwide, regardless of the scope of the program at issue. Moreover, it seems to demand a determination of what region, which could be a subregion of the trading area, contributes to impairment at each Class I area. We anticipate that modeling will be conducted on a regionwide basis, based on emissions reductions achievable by BART at all sources subject to BART within the program area, rather than as a series of groupings of areas of contribution with impacted Class I areas.

To clarify that every program need not address every Class I area nationwide, we propose adding the term "affected" to modify "class I areas" in paragraph (C). As noted in the preamble discussion of the finalization in § 51.308(e)(3) of the criteria for determining whether an alternative program makes greater reasonable progress than BART, states have some discretion in defining "affected" Class I areas. See part IV.B. of final BART guideline preamble.[8] We also propose eliminating the ambiguous clause formerly in paragraph (C).

In addition, we propose to clarify (in revised paragraph (B)) that the alternative program need not cover every BART category, but must cover every BART-eligible source within an affected category. The rationale for this is discussed below in the discussion of "Minimum Universe of Affected Sources."

Finally, we propose to add a paragraph (E) which would direct the State to compare the expected visibility improvement under the alternative program and under BART according to the criteria established in § 51.308(e)(3).

With these changes, paragraphs within § 51.308(e)(2)(i) would read as follows:

(A) A list of all BART-eligible sources within the State.

(B) A list of all BART source categories covered by the alternative program. The State is not required to include every BART source category in the program, but for each source category covered, the State must include each BART-eligible source within that category in the analysis required by paragraph (C) below.

(C) An analysis of the degree of visibility improvement that would be achieved in each affected mandatory Class I Federal area as a result of the emission reductions projected from the installation and operation of BART controls under paragraph (e)(1) of this section at each source subject to BART in each source category covered by the program.

(D) An analysis of the emissions reductions, and associated visibility improvement anticipated at each Class I area within the State, under the trading program or other alternative measure.

(E) A determination that the emission reductions and associated visibility improvement projected under (D) above (i.e., the trading program or other alternative measure) comprise greater reasonable progress, as defined in paragraph (e)(3) of this section, than those projected under (C) above (i.e., BART).

The new § 51.308(e)(3), cross referenced in proposed § 51.308(e)(2)(i)(E) above, was finalized in the June 15, 2005 notice of final rule making for the BART guidelines. In that action, we noted that we would seek comment in this rulemaking on whether compliance with the two-pronged visibility test contained in § 51.308(e)(3) should be the only means of demonstrating greater reasonable progress than BART, or whether other means, including qualitative factors, should also be allowed. Consequently, we seek comment in this proposal on whether it would be reasonable to allow States to use a weight-of-evidence approach to evaluate both air quality modeling results and other policy considerations. Such an approach might be reasonable, for example, where (1) the alternative program achieves emissions reductions that are within the range believed achievable from source-by-source BART at affected sources, (2) the program imposes a firm cap on emissions that represents meaningful reductions from current levels and, in contrast to BART, would prevent emissions growth from new sources, and (3) the State is unable to perform a sufficiently robust assessment of the programs using the two pronged visibility test due to technical or data limitations. Regarding the last point above, we are cognizant of the fact that

[6] These four factors are the costs of compliance, the energy and non-air environmental impacts of compliance, any controls already in use, and the remaining useful life of the source.

[7] It is important to note that existing paragraph (C) does not, in and of itself, necessarily indicate a group BART approach. That is, if BART-equivalent reductions are estimated in an appropriate manner under paragraph (B) (i.e., a manner that takes into account the degree of visibility improvement anticipated from controls), nothing in paragraph (C)'s requirement to analyze the degree of improvement expected from all sources subject to BART would run afoul of the court's prohibition of a group-BART requirement. In other words, it is the absence of visibility improvement as a factor in the BART determination under paragraph (B) which is problematic, not its inclusion in paragraph (C) as an indicator of the overall improvement achievable from BART.

[8] *http://www.epa.gov/visibility/actions.html#bart1.*

there may not be methods available to accurately project the distribution of emission reductions for source categories other than EGUs. Modeling tools such as the Integrated Planning Model, which enables projections of emission control decisions at EGUs based on regulatory requirements with a reasonable degree of confidence, do not exist for other source categories. We therefore seek comment on the extent to which other, non-modeled factors may be taken into consideration. We note that we are not soliciting comments on the terms of § 51.308(e)(3), as that provision is final.

Role of BART Guidelines for EGUs

The BART guidelines establish certain control levels or emission rates as presumptive standards for EGUs of greater than 200 MW capacity at plants with total generating capacity in excess of 750 MW. These presumptive levels were developed pursuant to EPA's duty under CAA section 169A(b)(2) to develop the guidelines under which States are required to make BART determinations for EGUs. The presumptive standards were developed through a formal rulemaking process, including extensive public comment and full analysis of costs and economic impacts, and apply to certain EGUs on a mandatory basis in the context of § 51.308(e)(1). Because they have been developed for application on a source-specific basis, we believe it is all the more appropriate to apply them in a trading context where the burden to meet BART-equivalent reductions may be shared among non-BART eligible sources as well. We therefore propose to make the presumptive standards guidelines applicable to alternative programs through a cross reference to § 51.308(e)(1) within § 51.308(e)(2)(i)(C). Thus, when States are estimating emissions reductions achievable from source-by-source BART, they must assume that all EGUs which would otherwise be subject to BART will control at the presumptive level, unless they demonstrate such presumptions are not appropriate at particular units. This demonstration should be guided by the same criteria discussed in the BART guidelines. We request comment on this proposed requirement.

Minimum Universe of Affected Sources

Section 51.308(e)(2)(ii) currently provides that, where a State opts to implement an alternative strategy to BART, the program must apply, at a minimum, to all BART-eligible sources within the State. Since the promulgation of the regional haze rule in 1999, EPA has had occasion to consider BART alternative programs in more detail, including the WRAP Annex and the Clean Air Interstate Rule, or CAIR.[9] We now believe that this "all or nothing" requirement is unduly restrictive and could pose an unnecessary barrier to the development of BART alternatives. The reason for this is that some BART-eligible source categories might not be suitable for participation in a trading program. For example, for some source categories there may be difficulty in quantifying emissions with sufficient accuracy and precision to guarantee fungibility of emission allowances. Because of these considerations, we believe States should have the opportunity to pursue source-by-source BART for one or more categories which are more appropriately addressed in that manner and a trading program for other source categories. Once a source category is selected for inclusion in the alternative program, however, all BART sources within the effected categories must be covered. Therefore, we are proposing to revise §§ 51.308(e)(2)(i)(B) and 51.308(e)(2)(ii) to this effect.

B. State Options for Complying With § 51.308(e)(2)(i) as Proposed

Under the framework provided by CAA sections 169A and 169B, there are several different contexts in which visibility impact analysis could be conducted. The development of a BART-alternative program could entail separate visibility analysis in as many as three distinct stages: (1) Determining which BART eligible sources are subject to BART, (2) determining what BART is, for each source or source category subject to BART, and (3) determining the overall visibility improvement anticipated from the application of BART to all sources subject to BART. In addition, the first two stages, if conducted on a source-by-source basis, could involve hundreds of separate modeling runs in each State. This could impose a tremendous burden on State air agency resources, and eliminate the administrative efficiency advantages provided by emission-trading alternatives. The EPA therefore seeks to allow States to combine modeling stages or use simplifying assumptions to the extent allowed by the CAA and controlling case law.

Before discussing the first two stages, we note that an individualized analysis is never required at the third stage—determining the overall improvement anticipated from source-by-source BART applied to all sources. By definition, visibility modeling at this stage must be done on a cumulative basis. This does not make it a prohibited approach under *CEED* v. *EPA*, because at this stage of the analysis, relevant aspects of the BART benchmark and the alternative program have already been determined. For example, if the emissions reductions anticipated from source-by-source BART were determined by conducting a full-scale BART analysis in accordance with § 51.308(e)(1) on each source, including the use of individualized modeling analysis for each source, it would then be appropriate to determine the overall visibility improvement expected from the application of this BART to all sources subject to BART.[10] We now turn to the discussion of the potential for providing flexibility to States in assessing visibility in the first two stages listed above.

1. Determination of Which BART-Eligible Sources Are Subject to BART

In the BART guidelines, announced on June 15, 2005,[11] we provide States with guidance on how to determine which BART-eligible sources are "reasonably anticipated to cause or contribute to any visibility impairment at any Class I area." Such sources are "subject to BART," meaning that the State must perform a BART determination based on the five statutory factors. Under the guidelines, States have considerable discretion to determine which BART-eligible sources are subject to BART, as the court emphasized in *American Corn Growers*.

In providing States with the guidance for these determinations, we note that States may choose to make BART determinations for all BART-eligible sources.[12] Alternatively, States could determine which BART-eligible sources are subject to BART using any of the options provided in the BART guidelines. States opting to develop a trading program or other alternative measure may wish to exercise their discretion to determine that all BART-eligible sources within affected categories are reasonably anticipated to cause or contribute to visibility impairment and therefore should be

[9] In the case of the CAIR, EPA adopted separate provisions that allow the use of an alternative trading program for a subset of BART-eligible sources.

[10] This is the stage of the analysis prescribed by existing § 51.308(e)(2)(i)(C), as noted in the section II.A above.

[11] *http://www.epa.gov/visibility/actions.html#bart1.*

[12] As noted in the preamble to the BART guidelines, States choosing this approach should use the data being developed by the regional planning organizations, or on their own, as part of the regional haze SIP development process to make a showing that the State contributes to visibility impairment in one or more Class I areas.

included in the analysis of emissions reductions achievable by BART. While this might eliminate the need for visibility modeling for each BART eligible source(reducing the administrative burden on the State), it also maximizes the number of BART-eligible sources included in this step of the analysis of an alternative strategy. At the next stage of the process, the BART determination (i.e., a determination of emissions reductions that would be achievable under source-by-source BART), a visibility impact analysis of some sort (discussed in next section below) would still be required. Therefore, States would have the opportunity to consider the anticipated visibility improvement from imposing controls on a single source against cost of control and other factors.

2. Determination of What Constitutes BART for Each BART Eligible Source

Source-by-Source Visibility Impact Analysis

One way to handle the visibility improvement element of the BART determination for all BART sources covered by the program would be to conduct individualized assessments of visibility improvement expected from each BART source under various control scenarios, as described in the BART guidelines. Such an approach would comport with the court's decision in *CEED* v. *EPA*, as it would completely avoid any taint of a "group BART" approach.

However, such an approach, when used in the context of an alternative program, could impose a significant resource burden upon the States, especially if the State is modeling a large number of BART-eligible sources over a broad regional area (i.e. multiple States). For example, a State could potentially need to conduct hundreds of model runs to isolate individual source contributions to multiple Class I areas across multiple States, and assess several sets of meteorological and terrain data to appropriately simulate the geophysical conditions influencing visibility. We seek comments, particularly from States and interested Tribes, regarding the feasibility of such an approach and other recommendations for the alternative program analysis. Although such an analysis is appropriate in the § 51.308(e)(1) source-by-source context, there may be more streamlined approaches that would be appropriate for BART determinations within an alternative program.

One area of consideration might be the type of model used. The BART guidelines provide that CALPUFF is the preferred model for the visibility improvement analysis in the source-by-source (§ 51.308(e)(1)) context but note that other appropriate models may be used. A regional modeling approach, using a photochemical grid model, may be more appropriate for an alternative program. In many cases, regional planning organizations (RPOs) have already prepared data sets that are "model ready" for a regional modeling application; this could significantly reduce the resource burden on States. We request comment on a preferred modeling methodology and whether the use of other models, including regional scale models such as the Community Multiscale Air Quality model (CMAQ) and the Comprehensive Air quality Model with extensions (CAMX), would be appropriate for BART determinations in the alternative-program context[13], and whether their use would significantly ease the burden on States.

Potentially Permissible Uses of Cumulative Approach

Today's proposed revisions would require States to consider anticipated visibility improvement along with the other statutory factors when determining BART for each source subject to BART in a source-by-source program. The analysis would then be used to compare BART to the alternative program. A State that complied with this requirement by performing a full-scale individualized visibility impact determination for each source would clearly satisfy the American Corn Growers and CEED decisions.

What is less clear from the decisions is whether a State may, in exercising its discretion, employ some type of cumulative approach or simplifying assumptions in the process of considering visibility improvement when estimating emissions reductions achievable by source-by-source BART. The EPA believes that States retain such discretion, and that the holding of *CEED* v. *EPA* is limited to circumstances where the EPA attempts to require or induce States to adopt cumulative approaches. The EPA is not requiring such a cumulative approach.

The court did not specifically discuss the relationship between the invalid "group BART" approach contained in the Annex (and approved in the Annex rule) and the requirements of the regional haze rule which governed the development of the Annex in the first place (*i.e.*, §§ 51.308(e)(2) and 51.309(f)). However, the idea that the EPA apparently forced this methodology upon the States appears to be central to the Court's reasoning in invalidating the Annex Rule. This is most clearly demonstrated in the court's discussion of the preliminary issue of whether the petitioner had standing to bring the suit. In that discussion, the court held that neither the fact that the States had a choice between the GCVTC provisions (§ 51.309) and the nationally applicable provisions (§ 51.308), nor the fact that States had taken the initiative in designing the Annex, was sufficient to "undermine the inference that EPA's pressure has been decisive." *CEED* v. *EPA* at 8–9. The issue here was whether the petitioner's current "injury in fact" (compliance with reporting requirements necessitated by the Annex) was fairly traceable to EPA's regulatory scheme, not whether the "group BART" provision per se was forced upon the States. However, since the "group BART" methodology was prescribed by the regulations which governed the Annex, to the extent EPA induced or "pressured" States into accepting § 51.309, it also must have pressured them into accepting group BART. Therefore, the CEED decision did not address the situation where a State exercises its discretion to use a cumulative approach to visibility modeling, absent any "pressure" from the EPA.

This reading of the case is not inconsistent with the court's statement that group BART is "invalid in any 169A context,"—a statement made in the context of EPA's ripeness claim. The EPA had argued the claims brought by the petitioner in *CEED* v. *EPA* had been ripe for review in 1999 at the time the action in *American Corn Growers* was brought and were thus precluded from being raised several years later. Petitioner CEED argued that *American Corn Growers* had either invalidated §§ 51.308(e)(2) and 51.309(f) (providing the States with the opportunity to submit the Annex), or regarded those issues as unripe at the time. *CEED*, Slip. Op. at 11. The court determined that *American Corn Growers* had not addressed "better than BART in the 309 context," and that the prior court's

[13] To reiterate, the comments we seek in this part of the preamble are with respect to the use of other models for use in the course of estimating the BART "benchmark" through the determination of BART control levels at sources subject to BART. For example, regional scale models might be used to inform BART determinations at many sources simultaneously through the use of techniques which can track multiple single source contributions. This type of modeling is different from the use of regional scale models to assess the cumulative impact on visibility after BART determinations have been made. There is no question that the use of regional scale models is appropriate for the latter purpose, as with our use of CMAQ to assess the visibility effects of CAIR and of the most-stringent-case BART for EGUs.

hesitation to do so was "reasonably based on the possibility that the BART benchmark used to calculate "better-than-BART" might in the end differ materially from the original BART." Finally, the court stated that "either way *American Corn Growers* is read, it plainly forbade use of the original BART methodology in any 169A context." *Id.*

We read the prohibition of group BART in "any 169A context" to mean that, in exercising its duty under CAA section 169A to promulgate BART regulations, EPA may not prescribe group BART in either the context of source specific BART or the context of a trading alternative. In both cases, it is EPA that is barred from prescribing such a methodology. Nothing in this decision appears to bar a State exercising its own discretion under CAA section 169A to define the BART benchmark using some approach that employs a cumulative analysis of visibility impairment.

For the reasons above, the EPA believes that although EPA may not require a cumulative visibility approach to estimating emissions reductions achievable from BART, States are not barred from using such approaches if they so choose

C. Reliance on Emissions Reductions Required for Other Purposes

In some cases, emissions reductions required to fulfill CAA requirements other than BART (or to fulfill requirements of a State law or regulation not required by the CAA) may also apply to some or all BART eligible sources. In such a situation, a State may wish to determine whether the reductions thus obtained would result in greater reasonable progress than would the installation and operation of BART at all sources subject to BART which are covered by the program.

One prominent example of an independent requirement which would satisfy BART for affected sources in affected States is the CAIR. (70 FR 25162, May 12, 2005). The emissions reductions required by the CAIR are for the purpose of addressing significant interstate contributions to PM and ozone nonattainment. The level of emissions reductions required was determined by an analysis of highly cost effective controls at EGUs. The CAIR establishes an EPA-administered cap and trade program for SO_2 and NO_X from EGUs, in which affected States may participate as a way of meeting their emission reduction requirements. (States can also choose to meet their emission reduction requirements in other ways, subject to certain limitations).

Because the CAIR trading program would cover BART-eligible EGUs, and because the CAIR would result in emission reductions surplus to CAA requirements as of the baseline date of the SIP (defined as 2002 for regional haze purposes), we determined that it was appropriate to treat participation in this program as a potential means of satisfying BART requirements for that source sector. See section IV of the preamble to the final BART rule.[14]

The fact that the CAIR reductions were required in order to assist in attainment of the NAAQS, rather than for the purpose of satisfying BART, significantly alters the consideration of what type of analysis is permissible to show greater reasonable progress than BART. At the heart of the court's decision in *CEED* v. *EPA* was the concern that by requiring States to use a group-BART approach in developing the benchmark by which an alternative program would be measured, the regional haze rule would require States to adopt an unduly stringent alternative approach. No basis for such a concern exists when an independent requirement determines the level of reductions required by an alternative program covering a universe of sources (including BART eligible sources). In such a case, the better-than-BART demonstration is clearly an after-the-fact analysis, used simply for comparison of the programs, and not to define the alternative program. In the CAIR example, the emission reduction levels were not based on the invalid "group-BART" approach or any other assumptions regarding BART, but were developed for other reasons. Specifically, the CAIR emission reductions were developed to assist with attainment of the NAAQS for $PM_{2.5}$ and ozone. Had EPA not performed the comparison of CAIR to BART for visibility progress purposes, the CAIR emission reduction requirements would remain unchanged. Therefore, EPA could not be construed as imposing an invalid BART requirement on States but rather is simply allowing States, at their option, to utilize the CAIR cap and trade program as a means to satisfy BART for affected EGUs. This same reasoning would be applicable whenever any requirement other than BART defines the emission reductions required by the alternative program.

Reasonable Progress as an Independent Requirement

The EPA believes that the requirement to make reasonable progress towards the national visibility goal, while related to the BART requirement, is a separate requirement analogous to the NAAQS-based requirements in CAIR. Therefore, where a State designs a program to meet reasonable progress goals, the "better-than-BART" demonstration would not be used to define the alternative programs, and the concerns of the DC Circuit in *American Corn Growers and CEED* v. *EPA* would not be applicable.

A State may choose to exercise its discretion under CAA section 169A and section 169B to achieve a larger portion of its reasonable progress requirements by use of an alternative program that affects non-BART eligible sources (including future sources) as well as BART-eligible sources. The fact that the CAA establishes a minimum reasonable progress requirement in the form of BART for a certain subset of sources, based on category, size, and age, does not restrict the States' authority to establish a more ambitious reasonable progress program. The emission reduction requirements of such a program could be based on a number of different approaches not driven by a requirement to demonstrate greater reasonable progress than BART. In such a case, the better-than-BART test would serve simply as a check that the program had in fact met the minimum requirement of achieving more progress than BART. Because the BART estimation would not be defining the emission reductions required, the State would be free to use its discretion to begin the analysis with the simplifying assumption of a most-stringent-case BART scenario (similar to our application of the presumptive BART EGU standards to all-BART eligible sources in our CAIR analysis). If the program made greater reasonable progress than the most-stringent-case BART, the State could end its analysis there. In such a case, the program would obviously make greater reasonable progress than BART defined in any less stringent manner. If the program is not shown to make greater progress than most-stringent-case BART, the State could use its discretion to perform additional analysis to determine what progress would be achievable by BART after taking into account visibility on a source-by-source basis.

To summarize, the EPA believes that where a State develops a program that include BART sources with the purpose of satisfying reasonable progress requirements for a larger universe of sources, the State's use of a most-stringent-case BART benchmark to satisfy the better than BART test would not run afoul of the D.C. Circuit's

[14] *http://www.epa.gov/visibility/actions.html#bart1.*

decisions, as long as EPA does not attempt to require or otherwise impose such a benchmark.

D. Revisions to § 51.308(e)(2) To Standardize and Clarify the Minimum Elements of Emissions Trading Programs in Lieu of BART

EPA is proposing to add provisions that list fundamental elements that any cap and trade program adopted under § 51.308(e)(2) in lieu of BART must contain. A cap and trade program, for the purposes of this section, means a program that establishes a cap on total annual emissions from the sources in the program, issues allowances with a total tonnage value equal to the tonnage of the cap, requires each source in the program to hold an amount of allowances after the end of the year with a tonnage value at least equal to the tonnage of the source's emissions during the year, and allows the purchase and sale of allowances by sources or other parties.

EPA is adding these elements in order to provide the States with the crucial requirements they need to adopt into their SIPs for a cap and trade program and also to help guide EPA's review of the SIPs. For a cap and trade program to function properly, States will need to adopt a number of specific provisions into their SIPs, but these fundamental elements are the ones EPA deems as necessary to ensure the integrity of any cap and trade program adopted in a SIP under § 51.308(e)(2)in lieu of BART. The elements listed below are consistent with the provisions of EPA's guidance for economic incentive programs titled "Improving Air Quality with Economic Incentive Programs" (EIP) (EPA–452/R–01–001, January 2001).

The following is a description of each of the trading program requirements that are included in proposed § 51.308(e)(2)(vi). For each of these proposed requirements, EPA requests comment on whether we have addressed the requirement to an appropriate level of detail and on whether the substance of the requirement is sufficient to ensure program integrity for the cap and trade program.

Applicability Provisions

EPA is proposing that States and Tribes must include applicability provisions specifically defining which sources are subject to the program. Applicability, or the group of sources that the cap and trade program will affect, must be essentially the same from state to state, or across a state, to minimize confusion and administrative burdens. For a cap and trade program, some of the factors States and Tribes may want to consider when defining the group of sources subject to the program include contribution to total emissions from each source within a given source category, and the ability to reliably measure emissions from the source. We encourage States and Tribes to design trading programs to be as inclusive as practicable, in order to maximize the efficiency of the market.

The emission cap of a cap and trade program may be compromised if a State or Tribe defines the population of sources in a way that allows production and emissions from sources covered under the program to shift to those that are not covered under the program. EPA is proposing that States and Tribes must demonstrate in their SIPs/TIPs that the applicability provisions are designed to prevent any significant, potential shifting of production and emissions from sources in the program to sources outside the program. For programs covering a single State, the demonstration should address potential shifting within the State, while multi-state programs must address shifting among those states covered under the program.

States and Tribes can demonstrate that the applicability provisions in the program will not result in significant shifting of emissions or production to sources outside the program by: (1) Showing that all the sources providing a product in the trading region are included in the cap and no sources outside the cap can pick up production from the capped source; or (2) otherwise showing that significant shifting of production and emissions is unlikely to occur, due to the nature of the program and the sources in the surrounding area.

Allowances

Allowances are a key feature of a cap and trade program. An allowance is a limited authorization for a source to emit a specified amount of a pollutant, as defined by the specific trading program, during a specified period of time. While allowances are frequently denominated at one ton, an allowance could be valued at more than or less than one ton, depending on the needs of the specific trading program or the monitoring method. At the end of the compliance period, a source owner's total tonnage value of allowances held must exceed or equal its annual actual total tonnage of emissions. For example, if an allowance was valued at one ton, a source that emits 1,000 tons of a pollutant in a given year must hold at least 1,000 allowances for that same pollutant.

Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or (where allowed) banked for use in future years.[15] Allowances are the currency used to achieve compliance with the emission limitation requirements. A cap and trade program provides compliance flexibility because each covered source has four compliance options: (1) Emit at its allowance allocation; (2) emit less than its allocated allowances and transfer extra allowances to other sources; (3) emit less than its allocated allowances and (if banking is allowed) save unused allowances for a later compliance period; and (4) obtain allowances from other sources and emit more than its allocation.

EPA proposes not to include the detailed requirements on how States and Tribes will allocate allowances for a cap and trade program adopted under § 51.308(e)(2) in lieu of BART. A State or Tribe can determine how to allocate allowances as long as the SIPs/TIPs require that the allocation of the tonnage value of allowances not exceed the total number of tons of emissions capped by the budget. For example, if the emissions budget is capped at 100,000 tons of emissions, and each allowance is valued at one ton, the SIP/TIP must prohibit the allocation of more than 100,000 allowances in any year.

Monitoring, Recordkeeping, and Reporting

Monitoring, recordkeeping, and reporting of a source's emissions are integral parts of any cap and trade program. Consistent and accurate measurement of emissions ensures that each allowance actually represents its specified tonnage value of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions at another source. This establishes the integrity of the allowance and instills confidence in the market mechanisms designed to provide sources with flexibility in achieving compliance. EPA is proposing that the monitoring, recordkeeping, and reporting provisions for boilers, combustion turbines, and cement kilns comply with 40 CFR Part 75, and that other sources include monitoring, recordkeeping, and reporting provisions

[15] Allowances are typically defined as not constituting property rights. See e.g. CAA section 403(f): "An allowance allocated under this title is a limited authorization to emit sulfur dioxide in accordance with the provision of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization." 42 U.S.C. 7651b(f).

that result in information of the same precision, reliability, accessibility and timeliness as provided for under 40 CFR Part 75.[16] Under certain circumstances, there may be some cap and trade programs that prevent certain sources from selling any allowances. EPA is expressly providing that such sources are not subject to the requirement that the monitoring, recordkeeping, and reporting provisions be consistent with, or equivalent to, 40 CFR Part 75.

Tracking System

A properly designed and implemented tracking system is critical to the functioning of a cap and trade program as allowance transfers, allocations, compliance, penalties, and banking are all components of the system. The tracking system must be accurate and efficient to allow for proper operation of an emissions trading market. The tracking system must also be transparent, allowing all interested parties access to the information contained in the accounting system. Transparency of the system increases the accountability for regulated sources and contributes to reduced transaction costs of transferring allowances by minimizing confusion and making allowance information readily available. The tracking system functions as the official record for the trading program. States, Tribes, and sources participating in the cap and trade program need to obtain accurate information about program activities, including information that allows them to track generation and use of allowance allocations and to ensure compliance. The allowance accounts in the tracking system are the official records for compliance purposes.

The proposed rule requires that the SIPs/TIPs must include provisions identifying a specific tracking process to track allowances and emissions. The proposed rule requires that the implementation plans must provide that emissions, allowance, and transaction information is transparent and publicly available in a secure, centralized data base that allows for frequent updates. The SIPs/TIPs must also provide for a tracking system that provides a unique way to identify each allowance, enforceable procedures for recording data, and enforceable time frames for submitting information and balancing accounts. If the trading program covers more than one State, the tracking system should be coordinated among all participating States and consistent for all sources and other participants.

Account Representative

EPA believes it is important that each source owner or operator designate an individual (account representative) who is authorized to represent the owner or operator in all matters pertaining to the trading program and who is responsible for the data reported for that source. The account representative will be responsible for, among other things, permit, compliance, and allowance related actions. In addition to designating an account representative, the SIP/TIP must provide that all matters pertaining to the account shall be undertaken only by the designated account representative. The proposed rule includes a requirement that the SIPs/TIPs must include such provisions.

Allowance Transfer

The proposed rule requires that SIPs/TIPs contain provisions detailing a uniform process for transferring allowances among all sources covered by the program and other possible participants. The provisions must provide procedures for sources to request an allowance transfer, for the request and transfer to be recorded in the allowance tracking system, for notification to the source that the transfer has occurred, and for notification to the public of each transfer and request. The provisions must allow timely transfer and recording of allowances and minimize administrative barriers to the operation of the allowance market.

Compliance

The proposed rule requires that cap and trade programs include a compliance provision that prohibits a source from emitting more emissions than the total tonnage value of allowances the source holds for that year. The proposed rule also requires that the cap and trade program specify the methods and procedures for determining on an annual basis whether a source holds sufficient allowances, by total tonnage value, for its emissions.

Penalty

In order to provide sources with a strong incentive to comply with the requirement to hold sufficient allowances for their emissions on an annual basis and to establish an immediate minimum economic consequence for non-compliance, the program must include a system for mandatory allowance deductions. We are proposing that if a source has excess emissions in a given year, allowances allocated for the subsequent year will be deducted from the source's account in an amount at least equal to three times the excess emissions. For example, if a source had 10 tons of excess emissions in the year 2014, and one allowance is valued at one ton, 30 allowances allocated for the year 2015 will be deducted from the source's account. This is consistent with existing trading programs such as the CAIR and the NO_x SIP call, and is designed to ensure that the penalty is a sufficient deterrent to non-compliance.

While we are proposing that the allowance deduction would be mandatory, a source would have the right to seek administrative or judicial review of the State's or Tribe's determination that the source had excess emissions in a given year. For example, the regulations would not limit the ability of the source to appeal the following determinations made by the State or Tribe: The number of allowances held by the source as of the deadline for transferring allowances and available for compliance, the amount of the source's emissions, and the comparison of the amount of the source's emissions and the total tonnage value of the source's allowances held and available for compliance. If the State or Tribe determines that the source's emissions exceed the source's total tonnage value of allowances for the year, we are proposing that at least three times the tonnage of excess emissions for the year be automatically deducted from the source's allowance holdings for the next year, even if an appeal is pending. The allowance deduction can be reversed to the extent the source prevails on appeal, but we believe that certain and immediate penalties are necessary to ensure the integrity of the market for allowances. The mandatory allowance deduction penalty provision will not limit the ability of the State, Tribe, or EPA to take enforcement action under State or Tribal law or the CAA.

Banking Provisions

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use

[16] Part 75 establishes requirements for continuous emissions monitoring systems (CEMS), as well as other types of monitoring (e.g., low mass emissions monitoring under 40 CFR 75.19) that may be used in lieu of CEMS under certain circumstances. Part 75 also establishes a process for proposal by owners and operators, and approval by the Administrator, of alternative monitoring systems (under subpart E of part 75) that meet requirements concerning precision, reliability, accessibility, and timeliness. Under today's proposed rule, a unit that meets the requirements for, and uses, monitoring specifically provided under part 75 (e.g., a CEMS or low mass emissions monitoring) or that meets the requirements for, and uses, an alternative monitoring system approved under subpart E of part 75 could be included in a cap-and-trade program and could sell allowances.

in a later compliance period. Banking provides compliance flexibility to sources, encourages early reductions, and encourages early application of innovative technology. However, banking also carries an associated risk of delayed or impaired achievement of air quality goals due to the use of banked allowances. The proposed rule allows trading programs to include provisions for banked allowances, so long as the SIPs/TIPs clearly identify how unused allowances may be kept for use in future years and whether there are any restrictions on the use of any such banked allowances.

Periodic Assessment of the Trading Program

The proposed rule requires the trading program to include provisions for periodic assessment of the program. Such periodic assessments are a way to retrospectively assess the performance of the trading program in meeting the goals of the regional haze program and determining whether the trading program needs any adjustments or changes. At a minimum, the program evaluation must be conducted every five years to coincide with the periodic report describing progress towards the reasonable progress goals required under § 51.308(g) and must be submitted to EPA. The information needed to perform the program should be collected through the monitoring, recordkeeping, and reporting requirements for the program. SIPs/TIPs should also provide procedures to make the public aware the program is being assessed and to give the public an opportunity to comment on the assessment.

Section 5.3(b) of the EIP contains a list of performance measures that States or Tribes should consider including in the program assessment. The performance measures needed by States/Tribes will depend upon the type of trading program, the amount of emissions covered by the program, the sources covered by the program, or public comments received during rulemaking. EPA suggests that States and Tribes work closely with their EPA Regional Office when developing the program assessment procedures.

III. Revisions to Regional Haze Rule § 51.309

A. Background

The previous section discussed the proposed changes to our regulations at § 51.308(e)(2) governing alternative programs to BART, in general. In this section, we discuss the implications of the CEED decision on the particular program at issue in that case—the WRAP Annex—and our proposed revisions in the section of the haze rule which specifically addresses the optional approach for certain western states (§ 51.309).

What Portion of the WRAP's Regional Haze Strategies Were Affected by the Court's Decision?

The petition for review granted by the court in *CEED* v. *EPA* requested that the "Annex Rule" be vacated and remanded. The "Annex Rule" refers to the June 2003 rule approving and codifying the "Annex" to the Grand Canyon Visibility Transport Commission (GCVTC) Recommendations. (68 FR 33764, June 5, 2003). The Annex contained SO_2 emission reduction milestones and the detailed provisions of a cap and trade program to be implemented automatically if voluntary measures failed to achieve the milestones. The Annex Rule codified these provisions in § 51.309(h)

The Annex was developed to implement the recommendations of the GCVTC for stationary sources. The court's decision in *CEED* v. *EPA* invalidated EPA's approval of the Annex, but did not question the validity of the GCVTC recommendations for a backstop trading program.[17]

How Is the "WRAP Annex" Related to Other Strategies Contained in Regional Haze Rule § 51.309?

As noted, the WRAP Annex was designed to implement one of the recommendations of the GCVTC. This commission, the creation of which was expressly required by CAA section 169B(f), also made numerous other recommendations. Other important provisions of the GCVTC report include: Strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions regarding clean air corridors, mobile sources, and wind-blown dust, among other things. The backstop cap and trade program which eventually became the Annex thus comprised only one component—albeit a central one—of a suite of strategies developed by the GCVTC.

The requirement that Western States submit an Annex to the GCVTC report in order to complete the GCVTC recommendations as an alternative means of regional haze compliance was contained in the 1999 Regional Haze Rule. In that rulemaking, we determined that the GCVTC strategies would provide for reasonable progress when supplemented by an Annex containing quantitative emission reduction milestones and documentation of the trading program or other alternative measure. See 64 FR 35749 and 35756–57. We therefore provided that the States' ability to comply with regional haze rule requirements through implementation of the provisions of § 51.309 was contingent upon EPA receiving the Annex meeting certain requirements no later than October 1, 2000. See § 51.309(f).

Five of the nine eligible States and one local agency (Bernalillo county, NM) opted to submit SIPs under section 51.309 prior to the 2003 deadline in 51.309(c). Doing so was not simply a matter of codifying those recommendations into State law but required the production, through a consensus process, of numerous subsidiary policy and technical tools. These included emissions inventories for stationary, mobile, area, fire, and road dusts sources; policy agreements on various issues such as annual emissions goals for wild land fires and incentives to increase renewable energy production (to name just a few of many); development of numerous technical support documents, and, of course, the development of the actual model rules for the backstop trading program. See the "Section 309 implementation Material" page of the WRAP's Web site at *http://www.wrapair.org/309/index.html* for a more complete listing.

The EPA believes the dedication of the WRAP States and Tribes to move forward with regional haze implementation in an expeditious manner is commendable and we want to continue to support these efforts. The substantial investment in time and resources (including millions of dollars of Congressionally allocated funding) made over a period of more than a decade has tremendously advanced the scientific understanding of the causes of visibility impairment in the West. In addition, the GCVTC, and the WRAP after it, have been extraordinarily successful in forging consensus on a large number of policy measures among a wide variety of States, Tribal governments, environmental advocates, and industry interests. As a result, EPA believes there are compelling policy reasons to continue to recognize the GCVTC/WRAP strategies and to provide a regulatory framework in the regional

[17] Subsequent to the *CEED* decision, the WRAP States expressed their disappointment with the decision and their desire to continue working with EPA to reconcile the WRAP's program to the court's decision. See WRAP State's statment at *http://www.wrapair.org/news/releases/PR_Holmstead_ltr.pdf.*

haze rule that allows for expedited implementation by interested States and Tribes.

The EPA also has the authority to promulgate regulations which are responsive to the GCVTC recommendations for addressing visibility impairment. In addition to requiring EPA to establish the GCVTC, Congress also imposed a duty upon EPA to promulgate regulations pursuant to CAA section 169A within 18 months of receipt of the report from the GCVTC, and to take that report into account in doing so. See CAA section 169B(e). Congress clearly intended EPA's regional haze regulations to be informed by the knowledge and information developed by the GCVTC.

The EPA is committed to fulfilling its obligation to further the work of the GCVTC by permitting the western states and tribes to move forward with the regional haze program recommended by the GCVTC. Therefore, in order to provide GCVTC States and Tribes an opportunity to revisit the program without being constrained by the invalid group BART methodology, we propose to amend the regional haze rule to allow states to submit (or resubmit) implementation plans under § 51.309, in conjunction with the first regional haze SIPs otherwise required under 51.308. This will provide time for States to revisit the SO_2 milestones and backstop emission trading program.

With respect to the other strategies contained 51.309, although these other provisions of § 51.309 were not affected by the decision in *CEED* v. *EPA* and may remain effective as a matter of State law in each State, the EPA cannot approve implementation plans under § 51.309 as meeting reasonable progress until the plans contain valid provisions for addressing stationary sources. The backstop SO_2 emissions trading program was a key element of the GCVTC recommendations, as evidenced by the fact that the use of the § 51.309 strategies to satisfy reasonable progress requirements was made contingent upon EPA receiving a satisfactory Annex. Because the Annex has been invalidated, States must have an opportunity to resubmit the details of the backstop trading program, before EPA can take action to determine whether reasonable progress requirements will be satisfied by § 51.309 SIPs.

The regulatory structure proposed to provide States and Tribes with this opportunity is discussed in more detail below.

B. Proposed Regulatory Framework for States and Tribes Choosing To Implement the GCVTC/WRAP Strategies

We interpret the court's decision in *CEED* v. *EPA* as having vacated the provisions in § 51.309(h) which were promulgated in 2003. (68 FR 33764, June 5, 2003.) The vacature of these provisions returns § 51.309 to the status quo ante as of that rulemaking. This included certain provisions for stationary sources contained in § 51.309(d)(4) and the provision calling for the submission of the Annex in the first place in § 51.309(f). For the reasons discussed below, we are not proposing to require States to resubmit another "Annex" to the GCVTC report, and are therefore repealing § 51.309(f); we are also proposing to retain the general stationary source requirements at § 51.309(d)(4), with certain modifications.

Will States Be Required To Submit a Revised Annex?

Section 51.309(f) made the approvability of § 51.309 SIPs contingent upon EPA receiving from the GCVTC (or other regional planning organization) an "annex" to the GCVTC report no later than October 1, 2000. The Annex was required to contain: quantitative emissions milestones for the years 2003, 2008, 2103, and 2018, which would provide for steady and continuing emissions reductions for the 2003–2018 period and satisfy the GCVTC goal of 50–70 percent reductions from 1990 emissions by 2040. The milestones were also required to show greater reasonable progress than would be achieved by the application of BART per § 51.308(e)(2) and be approvable in lieu of BART. In addition to quantitative milestones meeting these criteria, the Annex was required to contain documentation of the "backstop" market trading program, including model rules, monitoring provisions, provisions for the "triggering" of the trading program, and operational details. See § 51.309(f)(1)(i)–(ii).

Section 51.309(f) further provided procedures by which EPA would incorporate the provisions of the Annex into the regional haze rule (if an acceptable Annex were received). This in fact occurred, with the Annex being incorporated at § 51.309(h). Section 51.309 in its totality, including the new § 51.309(h), then governed the content of the SIPs which were due no later than December 31, 2003, per § 51.309(c).

The EPA believes the substantive requirements of § 51.309(f) remain valid. However, we do not believe the unusual procedural approach required by that section—wherein States submit provisions for EPA to codify in federal regulation for the purpose of governing subsequent SIP content—is either necessary or appropriate at this time. Therefore, we are proposing to import those substantive provisions of § 51.309(f) which are still relevant into § 51.309(d)(4), and to repeal the § 51.309(f) mechanism requiring an Annex. We are also proposing to import into § 51.309(d)(4) a few selected substantive provisions from the repealed Annex rule (§ 51.309(h)) for reasons explained later in this section of the preamble.

In 1999, EPA included § 51.309 in response to the western States' and Tribes' comments calling for recognition of the policy development efforts of the GCVTC. The Western Governors' Association in particular requested that EPA issue a final rule that explicitly described the content of SIPs that would assure reasonable progress in addressing visibility impairment on the Colorado Plateau based on the technical work and policy recommendations of the GCVTC. At that time, however, the GCVTC's recommendations did not address the requirements for BART, or provide sufficient detail to allow EPA to ascertain whether the backstop market trading program that was a central element of the Commission's recommendations would provide greater reasonable progress than BART. The purpose of the requirement in the 1999 rule that an Annex to the GCVTC report be submitted by October of 2000 was to insure that the GCVTC stationary source recommendations were developed and refined in sufficient detail to enable EPA to make an up-front determination that SIPs based on the work of the GCVTC would meet the requirements of the CAA. The decision to utilize an intermediate step of requiring States and Tribes to submit the details of the stationary source provisions in an "Annex", rather than directly in their SIPs (or TIPs), was a policy decision on EPA's part to accommodate the western State's request for endorsement of the substantial work of the GCVTC. In light of the facts as they exist now, six years later, the EPA does not believe that an "Annex" type approach is appropriate going forward.

One reason that an Annex approach would not be appropriate is that it would not be practicable to repeat such an approach at this time given that all regional haze SIPs, whether under § 51.309 or § 51.308, are due at the end of 2007, or about 18 months after

today's proposal.[18] The 1999 rule provided that EPA would promulgate regulations incorporating the Annex provisions within one year of receipt of the Annex. If a similar approach were followed today, there would not be sufficient time for States to follow their internal processes for SIP revisions, even if a new Annex were made due immediately upon finalization of this rule.

In addition, we are proposing that States submit § 51.309 SIPs at the same time as § 51.308 SIPs. These § 51.308 SIPS will establish reasonable progress goals for all Class I areas in the region. It is expected that some States will wish to build on the § 51.309 strategies in developing § 51.308 SIPs. Because both types of SIPs will be reviewed concurrently, it is a better policy in terms of both administrative efficiency and environmental progress to review both §§ 51.308 and 51.309 SIPs under the same overarching criteria, rather than providing prescriptive requirements for § 51.309 which may interfere in unforeseen ways with the integration of §§ 51.308 and 51.309 SIPs without providing any environmental benefits.

Finally, in 1999, the GCVTC had discharged its duties and the WRAP had not yet established a track record for producing consensus decisions on difficult policy issues such as the design of the backstop market trading program. Six years later, the WRAP has built up considerable institutional capacity, with EPA's support, and is well positioned to facilitate consensus and coordinate SIP development to insure inter-state consistency, without the need for prescriptive requirements at the level of detail formerly contained in the Annex Rule.

Therefore, we propose to amend § 51.309(d)(4) to provide that the major substantive requirements formerly required to be submitted in the form of an Annex to the GCVTC report will instead now be required in the § 51.309 SIP itself. These major substantive requirements include quantitative emissions milestones for the years 2008, 2013, and 2018 which provide for steady and continuing emissions reductions, satisfy the GCVTC goal of 50–70 percent reductions from 1990 emissions by 2040, and achieve greater reasonable progress than would be achieved by the application of BART per § 51.308(e)(2).

[18] See 42 U.S.C. 7407(d)(7)(A).

Which States and Tribes May Submit Implementation Plans Under § 51.309 as Proposed for Revision?

Because the WRAP Annex was invalidated due to its reliance on a group-BART methodology, the EPA cannot condition future participation in the § 51.309 program upon the submission and implementation of SIPs under the Annex rule (i.e., the SIPs that were due in 2003). Doing so would have the effect of continuing to impose upon the four states that did not opt for § 51.309 the choice between a § 51.309 program defined by an invalid methodology and § 51.308. Therefore, States in the 9-state visibility transport region that did not submit a SIP in 2003 under § 51.309 are not precluded from submitting a SIP under § 51.309 in 2007. Tribes in the transport region, as determined in earlier rulemakings, are not subject to the same deadlines and may submit a TIP under § 51.309 at a later date. In addition, nothing precludes States outside of the 9-state transport region from incorporating elements of the GCVTC strategies into their SIPs (under § 51.308), provided they demonstrate that such strategies meet the reasonable progress requirements of § 51.308.

What Is the Proposed Implementation Plan Schedule?

We are proposing that SIPs under § 51.309 will be due at the same time as those under § 51.308. The implementation plan deadlines for regional haze were amended by Congress to provide that regional haze SIPs for the entire State shall be submitted no later than three years after the promulgation of designations for the PM2.5 NAAQS.[19] Those designations were promulgated by EPA on December 17, 2004. Therefore regional haze SIPs are due no later than December 17, 2007. CAA 107(d)(7)(A).

CAA 107(d)(7)(B) provides that the above requirement does not preclude implementation plan revisions by the GCVTC States in 2003. However, as portions of the haze rule that governed the 2003 SIPs have been invalidated, States opting for § 51.309 will be required to resubmit SIPs some time after those portions have been rectified through finalization of today's proposed rule. As a practical matter it would be difficult for States to complete this process any time appreciably sooner than the end of 2007. The EPA sees no environmental advantage to requiring § 51.309 SIPs to be submitted on a different schedule than under § 51.308. Moreover, simultaneous deadlines will allow States and participating Tribes to more effectively integrate the technical work and policy development under the two sections. Therefore, we propose amending § 51.309(c) to replace the December 31, 2003 deadline with December 17, 2007.

In addition, we are proposing to delete certain language included in the SIP schedule provision in § 51.309(c) and replace it with similar provisions in the purpose provisions in § 51.309(a). Specifically, § 51.309(c) currently provides that "A Transport Region State that does not submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region." This language was formerly included in the SIP schedule section to clarify that, under the former bifurcated schedule, the final date for a State to make a decision between §§ 51.308 and 51.309 was at the time the § 51.309 SIP was due, in 2003. Now that we are proposing the same deadline for both sections, it is not necessary to specify that § 51.308 will come into effect if a GCVTC State misses the § 51.309 deadline. Each State in the GCVTC may choose between submitting a SIP under §§ 51.308 and 51.309 as it's regional haze strategy for the Colorado Plateau Class I areas; in either case the State must submit its SIP by the same deadline. Moreover, all GCVTC States will also be required to submit SIPs under § 51.308 whether or not they submit § 51.309 SIPs, in order to cover at a minimum any non-Colorado Plateau Class I areas within or affected by the States, unless those Class I areas have been covered under § 51.309(g) (additional Class I areas).

Finally, § 51.309(d)(1) currently requires that § 51.309 SIPs must be effective for the entire time between December 31, 2003, and December 31, 2018. We propose striking the reference to beginning in 2003, but maintaining the requirement to be effective through 2018. We also propose adding a clause to clarify that § 51.309 SIPs shall continue in effect until an implementation plan revision is approved by EPA in accordance with § 51.308(f). This will provide for continuity of visibility protection during the transition to the next long-term strategy period.

[19] See Consolidated Appropriations Act for Fiscal Year 2004, Public Law 108–199, January 23, 2004.

What Stationary Source Provisions Must § 51.309 SIPs Contain?

The 1999 regional haze rule, in addition to providing in § 51.309(h) for the submission of an Annex containing further elaboration of the GCVTC stationary source recommendations, also included certain fundamental requirements in § 51.309(d)(4) for a market trading program addressing stationary sources. These § 51.309(d)(4) requirements established the basic framework of the backstop trading approach, which were to be given more detailed form through the Annex provisions. Specifically, this section called for monitoring and reporting of SO_2 emissions, criteria and procedures for activation and operation of the backstop trading program, and provisions for compliance reporting. The section also called for a report on the necessity of adding stationary source provisions for NO_X and PM in the next SIP (due in 2008). See § 51.309(d)(4)(i)–(v). Upon the finalization of the Annex rule, these provisions were amended to add cross references as appropriate to the new Annex rule at § 51.309(h).

The EPA believes it is appropriate to retain these provisions in § 51.309(d)(4), in order to provide for the broad contours of a backstop cap and trade program consistent with the GCVTC recommendations. Nothing in these very general requirements imposes any invalid constraints upon the program in violation of *CEED* v. *EPA*. In addition, in the process of working over the past several years on the development of the detailed provisions of the Annex backstop trading program, EPA and the States have identified several specific areas where regulatory guidance is desirable. Therefore, certain provisions codified as part of the Annex rule in § 51.309(h) have been retained as SIP requirements in § 51.309(d)(4). By specifying EPA's expectations clearly in the rule provisions, we will promote consistency between States and provide greater certainty for the SIP review process. In doing so, EPA is cognizant of the need to avoid importing into § 51.309(d)(4) any provisions of the Annex rule that were directly or indirectly dependent on or related to the specific quantitative milestones contained in the Annex. Therefore, we have retained only those provisions we believe are critical to any conceivable variation on the GCVTC's backstop trading program recommendation. These are described in the following sections.

Provisions for Stationary Sources of Sulfur Dioxide

One of the critical components of the GCVTC's recommendations was the establishment of a series of declining caps on regional sulfur dioxide emissions from stationary sources. These declining caps on emissions are referred to as emissions milestones and must provide for steady and continuing reductions in sulfur dioxide emissions over time. While EPA is not specifying what the milestones must be, this provision requires the States to submit milestones for the period through 2018 that are consistent with the GCVTC's definition of reasonable progress and its goal of reducing sulfur dioxide emissions by 2040 to 50–70 percent of 1990 actual levels. We are proposing that the milestones be defined on an annual basis. However, we do not interpret the GCVTC's recommendation for steady and continuing reduction as requiring the milestones to decline each year. Rather, as was the case in the annex, the milestone may remain the same for more than one year as long as they provide for steady and continuing reductions over the course of long term planning period.

States must also show that the milestones provide for greater reasonable progress than would be achieved by application of BART in accordance with § 51.308(e)(2) and be approvable in lieu of BART. Because the § 51.308(e)(2) is proposed to be amended to remove the group BART requirement, there is no longer the concern that the § 51.309 option might be defined by an invalid condition. Instead, the § 51.308(e)(2) demonstration simply insures that the backstop trading program is approvable in lieu of BART, an approach based on our interpretation of CAA 169A(b)(2) which was upheld by the D.C. Circuit.

Documentation of Emissions Calculation Methods [(§ 51.309(d)(4)(ii)]

EPA is proposing that States must include documentation of the specific methodology used to calculate emissions in the base year for each source included in the program. EPA is also proposing that States must provide for the documentation of the specific emission calculation methods used for determining emissions from stationary sources for each of the subsequent years after the base year. This requirement was originally included in § 51.309(h)(2)(ii), and EPA is proposing to include it in § 51.309(d)(4)(ii). This provision is necessary because in establishing the baseline emissions for stationary sources, States will be using emissions data that reflect the emission calculation methodology the source was using at that time. It is likely that some facilities that have relied on emission factors and other less accurate methods for determining the emissions will improve the accuracy of the emission estimates. In order to ensure the determination of emissions and emission reductions are a true measure of progress and not a change in emission calculation methods, the rule requires States to provide documentation of the emission calculation methods that were used for affected sources. This information will be relied upon by the States and EPA to ensure that the comparison of emissions at the beginning of the program to the current reporting year takes into account changes in emissions calculation methods and ensures that comparisons do not provide for "paper" increases or decreases in emissions.

Monitoring, Recordkeeping, and Reporting of Sulfur Dioxide Emissions [§ 51.309(d)(4)(iii)]

EPA is proposing to revise § 51.309(d)(4)(ii) to incorporate necessary changes reflecting the new date of SIP submittals, to address the implications of the court's decision in *CEED* v. *EPA* as it affects the Annex, and to add a recordkeeping requirement. In addition, we are renumbering § 51.309(d)(4)(ii) through (d)(4)(iii). Under the revised language, a State must require monitoring and annual reporting of sulfur dioxide emissions within the State, and require that records be retained for a minimum of 10 years from the establishment of the record in order to ensure the enforceability of the program. EPA believes that requiring records to be retained for 10 years is reasonable because of the long duration of each planning period (*i.e.*, the first planning period for the § 51.309 program extends to the year 2018). In addition, by requiring records to be maintained for 10 years, States will ensure that any lag between the first phase of the program and full implementation of the backstop trading program will not hamper the enforceability of the program. EPA has determined these provisions are necessary to assess compliance with the sulfur dioxide milestones each year of the program. The monitoring, recordkeeping and reporting data required by each State must be sufficient to determine whether the milestones are achieved for each year through 2018.

Criteria and Procedures for a Market Trading Program [§ 51.309(d)(4)(iv)]

The approach to addressing stationary source SO_2 emissions recommended by the GCVTC was to establish a declining cap on emissions that would be met through voluntary measures. If voluntary measures did not succeed, however, the GCVTC recommended that States implement an enforceable market-based program that would serve as the "backstop" to the voluntary measures. EPA is proposing to require States to include in their SIPs the criteria and procedures for implementing the voluntary phase of the program and for triggering and activating the backstop phase of their programs if the voluntary measures do not succeed. The main elements of this requirement were originally included under § 51.309(h)(2)(iv), (v), and (vii), and § 51.309(h)(3). EPA is proposing to include these elements under § 51.309(d)(4)(iv). This provision requires the States annually to compare regional sulfur dioxide emissions to the milestone to determine whether the milestone was achieved for that year. The States must complete a draft annual evaluation report no later than 12 months after the milestone year. The Annex had provided that the annual compliance check be based on a three-year rolling average of actual emissions versus the corresponding three-year rolling average of the milestone, except for the first two years and the last year (2018) of the program. While we do not think it is appropriate to require the use of three-year average,we continue to believe that such an approach would be acceptable. We therefore propose to allow for this approach in § 51.308(d)(4)(i). If the comparison shows the milestone has been achieved, the plan must include procedures to activate the backstop trading program. This provisions also requires that the plans provide for program assessments in the years 2013 and 2018.

Market Trading Program [§ 51.309(d)(4)(v)]

As a backstop to voluntary measures, the implementation of the market trading program must be akin to a "turn-key" operation. EPA proposes to require that the plan include a complete and fully developed backstop market trading program sufficient to achieve the 2018 milestone that is consistent with the criteria for cap and trade program in § 51.308(e)(2)(vi). In the event a milestone has not been achieved, the States will be required to make this final determination no later than 15 months after the end of the first year in which the milestone was not achieved. The final determination that the milestone has not been achieved will trigger (*i.e.*, activate) the trading program. After the market trading program has been triggered, some time will be required before the full implementation of the trading program can be accomplished, but the trading program should come into effect as soon as practicable.

Provision for 2018 Milestone [§ 51.309(d)(4)(vi)]

We are proposing new provisions governing the period beginning in 2018. The § 51.309 program generally focuses on setting and achieving milestones for the period of 2003 through 2018. States participating in the § 51.309 program will eventually need to prepare additional plans to address visibility beyond 2018. See § 51.308(f). These plans will need to meet the requirements of § 51.308 or other alternate regulations EPA may adopt in the future. The proposed language in § 51.309(d)(4)(vi) is intended to bridge any potential gaps between the § 51.309 plan and these future plans and to ensure the milestone for 2018 is achieved by the § 51.309 plans and maintained in future plans. Section 51.309(d)(4)(vi)(A) requires that § 51.309 plans clearly prohibit emissions beginning in 2018 in excess of the 2018 milestone unless and until a new plan covering the period after 2018 is approved by EPA.

Section 51.309(d)(4)(vi)(B) requires that § 51.309 plans include special provisions for ensuring the 2018 milestone is achieved beginning in 2018. Specifically, this provision requires § 51.309 plans to address the potential gap created by any lag between the date the backstop trading program is triggered and the date the trading program is fully implemented and source compliance is required. Under the backstop trading program, sources have an incentive to voluntarily achieve the milestones to avoid triggering an enforceable trading program. Because the § 51.309 plans are designed generally to cover the period between the initial submission in 2007 and 2018, the deterrent incentives of the backstop trading program are diminished where enforceable requirements do not begin until after the end of the covered period or where such enforceable requirements may never be implemented because they will be replaced by a different planning approach. Thus, a special regulatory provision is necessary to address the possible situation where a milestone is exceeded close to, in, or after 2018 such that any delay in the implementation of the trading program could undercut the necessary incentives to meet the 2018 milestone.

To satisfy the requirements of § 51.309(d)(4)(vi), States will need to address both the situation where milestones are exceeded in or after 2018, and the situation where milestones are exceeded before 2018 but the backstop emissions trading program will not be fully implemented and enforceable until after 2018. In both situations, the § 51.309 plan must include special provisions, including financial penalties, to prohibit and enforce against any exceedances of the 2018 milestone beginning in 2018 and continuing until the § 51.309 program is replaced with a plan covering the period after 2018.[20]

With respect to the financial penalty provisions to be included in the SIPs, it is important that the mechanism for assessing and collecting penalties be sufficiently immediate to provide the proper incentives for the cap and trade program. Penalties that are negotiated and require potentially drawn out litigation to enforce may not ensure that sources have a clear, known cost associated with a given amount of excess emissions. One option to create the proper incentives is for States to require automatic penalties or, for States lacking authority for such automatic penalties, to create a streamlined penalty approach that encourages timely payment. Specifically, EPA believes States could adopt an approach that sets a fixed penalty (*e.g.*, $5,000 per ton of excess emissions) that sources can volunteer to pay to quickly settle an excess emissions violation. The States would commit to take formal enforcement action and seek higher penalties as authorized by law against any source that has excess emissions and does not agree to the streamlined settlement. Such an enforcement strategy, if consistently and aggressively administered, should result in a penalty scheme that is sufficiently immediate to create the proper cap and trade incentives. EPA will review State implementation of any such streamlined

[20] This special penalty provision for 2018 is distinct from the requirement for automatic allowance deductions in § 51.308(e)(2)(vi)(J), which is also applicable to the WRAP's program per the cross reference to § 51.308(e)(2) in § 51.309(d)(4)(v). In the Annex rule, SIPs were required to provide for automatic allowance deductions at a 2:1 ratio, and for automatic financial penalties of $5000/ton or an alternative amount that substantially exceeds the cost of allowances. See § 51.309(h)(x) and preamble discussion at 68 FR 33776–33777. Because some States subsequently determined that they lack authority to impose automatic financial penalties, we are proposing to instead utilize the 3:1 ratio for automatic allowance deductions as provided in § 51.308(e)(2)(vi)(J) in order to insure there is a sufficient incentive for compliance.

settlement approaches and will consider taking separate federal enforcement action in the event a State fails to pursue adequate enforcement against a source declining the streamlined settlement. In such cases, EPA will pursue penalties up to the maximum allowed under the CAA (currently $32,500 per day per violation). In addition, if EPA finds a pattern of State failure to obtain appropriate penalties, EPA could use its authority under CAA section 110 to call for a SIP revision to address the deficiency.

Provisions for NO_X and PM BART Requirements [§ 51.309(d)(4)(vii)]

In the 1999 rule § 51.309(d)(4)(v) required States to submit a report assessing emission control strategies for stationary source NO_X and PM. The report was required to include an evaluation of the need to establish milestones for NO_X and PM to avoid any net increases in these pollutants from Stationary Sources within the Transport region. The report was also intended to support the potential development and implementation of a multipollutant market based program. The initial § 51.309 SIPs (submitted by 12/31/2003) were required to provide for SIP revisions no later than 12/31/2008, containing any long term strategies and BART requirements for stationary source PM and NO_X.

The WRAP developed the report required by this section.[21] The development of the report provided much useful information on the role of PM and NO_X in visibility impairment at western Class I areas, and the contribution of stationary source emissions to impairment caused by these pollutants. However, the report concluded that currently available computer models could not replicate the chemical interactions of NO_X with other atmospheric constituents with sufficient accuracy to support regulatory decisions. For this and other reasons, the WRAP States have not yet determined appropriate control strategies for NO_X and PM, but are continuing to work on these issues.

Therefore, we propose amending the stationary source NO_X and PM provision within § 51.309 (now numbered § 51.309(d)(4)(vii)) to specify that States submitting § 51.309 SIPs must address BART for PM and NO_X. This proposed provision is intended to clarify that if EPA determines that the SO_2 emission reductions milestones and backstop trading program submitted in the § 51.309 SIPs makes greater reasonable progress than BART for SO_2, this will not constitute a determination that BART for PM or NO_X is satisfied for any sources which would otherwise be subject to BART for those pollutants.[22] Proposed § 51.309(d)(4)(vii) would allow States the flexibility to address these BART provisions either on a source-by-source basis under § 51.308(e)(1), or through an alternative strategy under § 51.308(e)(2), The determination of which strategy to use is separate for each pollutant. For example, a State could choose to address PM through a source-by-source BART program, while addressing NO_X by use of a trading program or other alternative measure. Moreover, such an alternative measure could build upon the backstop SO_2 program under § 51.309 and employ a similar approach for PM and/or NO_X, or the alternative measure could be completely different than the SO_2 approach. For example, a State (or group of States) could decide to implement a NO_X cap and trade program from the outset, rather than employ a "backstop" approach.

Projection of Visibility Improvement (§ 51.309(d)(2) and Periodic SIP Updates (§ 51.309(d)(10)

Section 51.309(d)(10), as promulgated in 1999, required periodic SIP revisions in 2008, 2013, and 2018. Among other things, these revisions were to include an assessment of whether current SIP elements and strategies are sufficient to enable the State (and other States affected by its emissions) to meet "all established reasonable progress goals." § 51.309(d)(10)(i)(G). Section 51.309(d)(10) also required that if the State determines that existing measures were inadequate to meet reasonable progress goals, the State must revise its SIP to contain additional strategies within one year, or take certain other specified actions in the event that emission sources in other jurisdictions threaten reasonable progress. See § 51.309(d)(10)(ii)(A)–(D).

Because implementation of § 51.309 SIPs has been delayed by the CEED decision and the consequent need to revise § 51.309 in this rulemaking, a SIP revision in 2008 will no longer be appropriate. Under today's proposed revisions to § 51.309, SIPs will not be due until December 2007, and therefore will not have been in effect long enough to permit assessment in 2008. Given these facts, we believe that the visibility projection called for by § 51.309(d)(2) should serve as a demonstration that the complete strategies contained in § 51.309 SIPs comprise reasonable progress for the 16 mandatory federal areas on the Colorado Plateau.

This also points to a need for clarification of what that reasonable progress test entails. Section 51.309(d)(10) refers to strategies which meet "established reasonable progress goals." As the preamble notes, the language of § 51.309(d) is virtually identical to the periodic SIP review provisions in §§ 51.308(g) and 51.308(h). 64 FR 35755. In the § 51.308 context, the meaning of that term is clear, as § 51.308(d)(1) calls for the establishment of reasonable progress, in deciviews, for each federal mandatory Class I area, based upon a uniform rate of progress to natural conditions in 2064 and the application of the statutory reasonable progress factors. See 64 FR 35731. Section 51.308(d)(1) also provides that reasonable progress goals must "ensure no degradation of visibility for the least impaired days." In the § 51.309 context, however, it is less clear what yardstick should be used against the visibility projections because by definition reasonable progress under § 51.309 is defined as compliance with all the provisions of § 51.309.

In our *Guidance for Tracking Progress Under the Regional Haze Rule*, we explained:

> Section 169A(a)(4) and other subsections of the Clean Air Act call for reasonable progress "toward meeting the national goal" of eliminating man-made impairment of visibility. Since any progress goal calling for degradation of visibility, even at a modest rate, would not be progress toward the goal, it is unlikely that EPA could propose to approve any demonstrations that purport to show further visibility degradation as reasonable progress, (e.g., in situations where visibility would be expected to degrade, and such projected degradations would be lessened but not reversed thru proposed emission control strategies). EPA–454/B–03–004, September 2003, at p. 1–9.

Therefore, although reasonable progress for the 16 Class 1 areas on the Colorado Plateau is not defined by the "glide path" methodology in § 51.308, we propose establishing as a minimum criterion of reasonable progress for these areas a requirement of no degradation from baseline conditions, for both the 20 percent most impaired and 20 percent least impaired days. These criteria should be used in the visibility

[21] "Stationary Source NO_X and PM Emissions in the WRAP Region: An Initial Assessment of Emissions, Controls, and Air Quality Impacts" *http://www.wrapair.org/forums/mtf/nox-pm.html.*

[22] In limited circumstances, it may be possible for a State to demonstrate that an alternative program which controls only emissions of SO_2 could achieve greater visibility improvement than application of source-specific BART controls on emissions of SO_2, NO_X and/or PM. We nevertheless believe that such a showing will be quite difficult to make in most geographic areas, given that controls on SO_2 emissions alone in most cases will result in increased formation of ammonium nitrate particles.

projection under § 51.309(d)(2) and in the progress reports under § 51.309(d)(10). Furthermore, the assessment required in § 51.309(d)(10)(i)(C) should be conducted as described in the *Tracking Progress* guidelines. Baseline conditions, as defined in that document, should be based on monitoring data from the 2000–2004 period.

We also wish to clarify that a projection of visibility conditions is not necessarily limited to the output of air quality simulation models. Under § 51.309(d)(2), the State could use the same methods to project visibility improvement that a State could use under § 51.308(d)(3)(ii) and (iii) to demonstrate how its long term strategy will satisfy its contribution to achieving the reasonable progress goals established for each Class I area the State may affect. Examples of such methods are described in the EPA's *Draft Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze* (January 2, 2001).

Additional Class I Areas [§ 51.309(g)]

In the 1999 rule, § 51.309(g) provided that a State could satisfy reasonable progress requirements for mandatory Class I Federal areas in addition to the 16 Class I areas on the Colorado plateau by implementing the strategies in § 51.309. To do so, a State was required to establish reasonable progress goals for the additional Class I areas and adopt additional measures if necessary, in accordance with § 51.308(d)(1) through (4) (*i.e.*, the generally applicable requirements for reasonable progress). States were also required to declare in the SIP submitted no later than December 31, 2003 whether their other Class I areas would be addressed under § 51.308 or under § 51.309(g). Section 51.309(g)(4)(i) clarified that States could build upon and take credit for the strategies under § 51.309 in developing long term strategies for additional Class I areas. Section 51.309(g)(4)(ii) clarified that the SO_2 backstop emissions trading program could satisfy BART for additional Class I areas, subject to a demonstration that greater reasonable progress would be achieved at such Class I areas.

We are proposing to retain the substance of the additional Class I area provisions in § 51.309(g), but to eliminate the requirement that States make a declaration in the SIP due in 2003 as to which section of the rule would be used to address additional Class I areas. This change is to conform with our determination, discussed earlier in this preamble, that it is no longer appropriate to impose a 2003 deadline or to condition future participation in § 51.309 strategies upon the submission of SIPs in 2003. Other administrative changes in the structure of § 51.309 are proposed to accommodate this change (*i.e.*, renumbering of paragraphs and corrections of cross references).

IV. 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is a significant regulatory action. We have therefore provided it to OMB for review.

Today's proposed rule would provide States and interested Tribes with optional means, such as emissions trading programs, to comply with CAA requirements for BART. The proposed rule would require that alternatives achieve greater "reasonable progress" towards CAA visibility goals than would source-by-source BART. By their nature, emissions trading programs are designed to achieve a given level of environmental improvement in the most cost effective manner possible. Therefore, today's proposed rule would achieve at least as a great a societal benefit as source-by-source BART, at a social cost that is likely to be less than, or at worst equal to, the social costs of source-by-source BART.

In the Regulatory Impact Analysis (RIA) for our recent promulgation of the source-by-source BART guidelines, we determined that the social costs of source-by-source BART for both EGUs and non-EGUs nationwide was between $0.3 and $2.9 billion (1999 dollars). depending on the level of stringency implemented by States and on the interest rate used. The human health benefits of BART, in contrast, ranged from $1.9 to $12 billion (1999 dollars), depending on the same variables. These figures do not include many other human health benefits that could not be quantified or monetized, including all benefits attributable to ozone reduction (the benefits were based on reductions in PM only). In addition, economic benefits due to visibility improvement in the southeastern and southwestern U.S. were estimated to be from $80 million to $420 million. Finally, BART would also produce visibility benefits in other parts of the country, and non-visibility ecosystem benefits, which were also not quantified. Therefore, the social benefits of BART far outweigh the social costs.

It is not possible to perform an economic analysis of today's rule because the actual parameters of any trading programs in lieu of BART will be determined by States and Tribes. However, because trading program alternatives would produce comparable overall benefits (in the course of satisfying the requirement to achieve greater "reasonable progress" towards visibility goals) and use market forces to reduce costs, the benefits of today's rule would also far outweigh the costs.

B. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The OMB has approved the information collection requirements contained in the final Regional Haze regulations (64 FR 35714, July 1, 1999) and has assigned OMB control number 2060–0421 (EPA ICR No. 1813.04).

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 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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 rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. This proposed rule would revise the provisions of the regional haze rule governing alternative trading programs, and provide additional guidance to States, which are not defined as small entities. We continue to be interested in the potential impacts of our rules 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 (Pub. L. 104–4) (UMRA), 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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. In addition, 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.

We believe that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule (64 FR 35761, July 1, 1999). However, today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or Tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, is an optional program. Because the alternative trading programs under 40 CFR 51.308 and 40 CFR 51.309 are options that each of the States may choose to exercise, these revisions to §§ 51.308 and 51.309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The program is not required and, thus is clearly not a "mandate." Moreover, as explained above, today's proposed rule would reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, of $100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

E. Executive Order 13132: Federalism

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described above, this proposed rule contains revisions to §§ 51.308 and 51.309 of the

regional haze rule which would reduce any regulatory burden on the States. In addition, these are optional programs for States. These revisions to §§ 51.308 and 51.309, accordingly, would not directly impose significant new requirements on State and local governments. Moreover, even if today's proposed revisions did have federalism implications, these proposed revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this proposed rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this proposed rule. This rule directly implements specific recommendations from the Western Regional Air Partnership (WRAP), which includes representatives from all the affected States.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on today's rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule will overall reduce any regulatory burden on the Tribes. Moreover, the §§ 51.308 and 51.309 programs are optional programs for Tribes. Accordingly, this proposed rule would not have tribal implications. In addition, this proposed rule would directly implement specific recommendations from the Western Regional Air Partnership (WRAP), which includes representatives of Tribal governments. Thus, although this proposed rule would not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

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

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

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 Order has the potential to influence the regulation. Similarly to the recently finalized source-specific BART revisions (70 FR 39104, July 6, 2005), this proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard based on health or safety risks. Therefore this proposed rule does not involve decisions on environmental health or safety risks that may disproportionately affect children. The EPA believes that the emissions reductions from the control strategies considered in this rulemaking will further improve air quality and will further improve children's health.

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

This proposed rule is not subject to Executive Order 13211, "Actions that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a "significant energy action," because it will have less than a 1 percent impact on the cost of energy production and does not exceed other factors described by OMB that may indicate a significant adverse effect. (See, "Guidance for Implementing E.O. 13211," OMB Memorandum 01–27 (July 13, 2001) *www.whitehouse.gov/omb/memoranda/m01-27.html.*) This proposed rule provides an optional cost effective and less burdensome alternative to source-by-source BART as recently finalized (70 FR 39104, July 6, 2005); we have already found that source-by-source BART is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The 1999 regional haze rule provides substantial flexibility to the States, allowing them to adopt alternative measures such as a trading program in lieu of requiring the installation and operation of BART on a source by source basis. This proposed rule contains provisions governing these alternative measures, which will provide an alternative to BART that reduces the overall cost of the regulation and its impact on the energy supply.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the regional

haze rule (cited above), particularly in chapters 2 and 9 of the RIA. This proposed rule makes no changes that would have a disproportionately high and adverse human health or environmental effect on minorities and low-income populations.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 169(a) and 169(b) of the CAA (42 U.S.C. 7545(c) and (k)). These sections require EPA to issue regulations that will require States to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169(A).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 21, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

2. Section 51.308 is amended by revising paragraphs (e)(2)(i)(A), (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(ii), and adding paragraphs (e)(2)(i)(D), (e)(2)(i)(E), and (e)(2)(vi) to read as follows:

§ 51.308 Regional haze program requirements.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) A list of all BART-eligible sources within the State.

(B) A list of all BART source categories covered by the alternative program. The State is not required to include every BART source category in the program, but for each source category covered, the State must include each BART-eligible source within that category in the analysis required by paragraph (e)(2)(i)(C) of this section.

(C) An analysis of the degree of visibility improvement that would be achieved in each affected mandatory Class I Federal area as a result of the emission reductions projected from the installation and operation of BART controls under paragraph (e)(1) of this section at each source subject to BART in each source category covered by the program.

(D) An analysis of the emissions reductions, and associated visibility improvement anticipated at each Class I area within the State, under the trading program or other alternative measure.

(E) A determination that the emission reductions and associated visibility improvement projected under paragraph (e)(2)(i)(D) of this section (i.e., the trading program or other alternative measure) comprise greater reasonable progress, as defined in paragraph (e)(3) of this section, than those projected under paragraph (e)(2)(i)(C) of this section (i.e., BART).

(ii) A demonstration that the emissions trading program or alternative measures will apply, at a minimum, to all BART-eligible sources within the covered source categories within the State. Those sources having a federally enforceable emission limitation determined by the State and approved by EPA as meeting BART in accordance with section 302(c) or paragraph (e)(1) of this section do not need to meet the requirements of the emissions trading program or alternative measure, but may choose to participate if they meet the requirements of the emissions trading program or alternative measure.

* * * * *

(vi) A cap and trade program adopted by a State in lieu of BART must include the following elements:

(A) Applicability provisions defining which sources are subject to the program. The state must demonstrate that the applicability provisions (including the size criteria for including sources in the program) are designed to prevent any significant, potential shifting within the state of production and emissions from sources in the program to sources outside the program. In the case of programs including multiple states, the states must demonstrate that the applicability provisions cover essentially the same size facilities and, if source categories are specified, the same source categories and prevent any significant, potential shifting within such states of production and emissions to sources outside the program.

(B) Allowance provisions ensuring that the total tonnage value of allowances issued each year under the program will never exceed the total number of tons of the emissions cap established by the budget or milestone.

(C) Monitoring provisions providing for consistent and accurate emissions measurements to ensure that each allowance actually represents the same specified tonnage of emissions and that emissions are measured with similar accuracy at all sources in the program. The monitoring provisions must require that boilers, combustion turbines, and cement kilns allowed to sell allowances comply with part 75 of this chapter. The monitoring provisions for other sources allowed to sell allowances must require that such sources provide emissions information with the same precision, reliability, accessibility, and timeliness as information provided under part 75 of this chapter.

(D) Recordkeeping provisions that ensure the enforceability of the emissions monitoring provisions and other program requirements. The recordkeeping provisions must require that sources allowed to sell allowances comply with the recordkeeping provisions of part 75 of this chapter.

(E) Reporting provisions requiring timely reporting of monitoring data with sufficient frequency to ensure the enforceability of the emissions monitoring provisions and other program requirements and the ability to audit the program. The reporting provisions must require that sources allowed to sell allowances comply with the reporting provisions of part 75 of this chapter, except that, if the Administrator is not the tracking system administrator for the program, emissions may be reported to the tracking system administrator, rather than the Administrator.

(F) Tracking system provisions which provide for a tracking system that is publicly available in a secure, centralized database to track in a consistent manner all allowances and emissions in the program.

(G) Authorized account representative provisions ensuring that a source owner or operator designates one individual who is authorized to represent the owner or operator in all matters pertaining to the trading program.

(H) Allowance transfer provisions providing procedures that allow timely transfer and recording of allowances, minimize administrative barriers to the operation of the allowance market and ensure that such procedures apply uniformly to all sources and other potential participants in the allowance market.

(I) Compliance provisions prohibiting a source from emitting a total tonnage of a pollutant that exceeds the tonnage value of its allowance holdings and including the methods and procedures for determining whether emissions exceed allowance holdings. Such method and procedures shall apply consistently from source to source.

(J) Penalty provisions providing for mandatory allowance deduction for excess emissions that apply consistently from source to source. The tonnage value of the allowances deducted shall equal at least three times the tonnage of the excess emissions.

(K) For a trading program that allows banking of allowances, provisions clarifying any restrictions on the use of these banked allowances.

(L) Program Assessment provisions providing for periodic program evaluation to assess whether the program is accomplishing its goals, and whether modifications to the program are needed to enhance performance of the program.

3. 51.309 is amended as follows:

a. Revising paragraph (a).

b. Revising paragraphs (b)(5) and (b)(7).

c. Revising paragraph (c).

d. Revising paragraphs (d)(1), (d)(4)(i) through (v) and (d)(10).

e. Revising paragraph (f).

f. Revising paragraphs (g) introductory text and paragraphs (g)(1) and (2).

g. Removing paragraphs (g)(3) and (g)(4).

h. Adding paragraphs (d)(vi)(A), (d)(vi)(B) and (d)(vii).

i. Removing paragraph (h).

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

(a) What is the purpose of this section? This section establishes the requirements for the first regional haze implementation plan to address regional haze visibility impairment in the 16 Class I areas covered by the Grand Canyon Visibility Transport Commission Report. For the period through 2018, certain States (defined in paragraph (b) of this section as Transport Region States) may choose to implement the Commission's recommendations within the framework of the national regional haze program and applicable requirements of the Act by complying with the provisions of this section. If a transport-region State submits an implementation plan which is approved by EPA as meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas for the period from approval of the plan through 2018. Any Transport Region State electing not to submit an implementation plan under this section is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region. Except as provided in paragraph (g) of this section, each Transport Region State is also subject to the requirements of § 51.308 with respect to any other Federal mandatory Class I areas within the State or affected by emissions from the State.

(b) * * *

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions, in tons per year, for a given year, assessed annually, through the year 2018, consistent with paragraph (d)(4) of this section.

* * * * *

(7) Base year means the year for which data for a source included within the program were used by the WRAP to calculate emissions as a starting point for development of the milestone required by paragraph (d)(4)(i) of this section.

* * * * *

(c) Implementation Plan Schedule. Each Transport Region State electing to submit an implementation plan under this section must submit such a plan no later than December 17, 2007. Indian Tribes may submit implementation plans after this deadline.

(d) * * *

(1) Time period covered. The implementation plan must be effective through December 31, 2018, and shall continue in effect until an implementation plan revision is approved by EPA in accordance with § 51.308(f).

* * * * *

(4) * * *

(i) Provisions for stationary source sulfur dioxide. The plan submission must include a sulfur dioxide program that contains quantitative emissions milestones for stationary source sulfur dioxide emissions for each year through 2018. Compliance with the annual milestones may be measured by comparing a three-year rolling average of actual emissions with a rolling average of the emissions milestones for the same three years. The milestones must provide for steady and continuing emissions reductions through 2018 consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2013 and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of BART pursuant to § 51.308(e)(2) and approvable in lieu of BART.

(ii) Documentation of emissions calculation methods. The plan submission must include documentation of the specific methodology used to calculate emissions during the base year for each emitting unit included in the program. The implementation plan must also provide for documentation of any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year.

(iii) Monitoring, recordkeeping, and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the monitoring, recordkeeping, and annual reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring, recordkeeping, and reporting data must be sufficient to determine annually whether the milestone for each year through 2018 is achieved. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization. The plan must provide for retention of records for at least 10 years from the establishment of the record.

(iv) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for conducting an annual evaluation of whether the milestone is achieved and in accordance with paragraph (d)(4)(v) of this section, for activating a market trading program in the event the milestone is not achieved. A draft of the annual report evaluating whether the milestone for each year is achieved shall be completed no later than 12 months of the end of each milestone year. The plan must also provide for assessments of the program in the years 2013 and 2018.

(v) Market Trading Program. The implementation plan must include requirements for a market trading program to be implemented in the event a milestone is not achieved. The plan shall require that the market trading program be activated beginning no later than 15 months after the end of the first year in which the milestone is not achieved. The plan shall also require that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Such market trading program

must be sufficient to achieve the milestones in paragraph (d)(4)(i) of this section, and must be consistent with the elements for such programs outlined in § 51.308(e)(2)(vi).

(vi) Provision for the 2018 milestone.

(A) Unless and until a revised implementation plan is submitted in accordance with § 51.308(f) and approved by EPA, the implementation plan shall prohibit emissions from covered stationary sources in any year beginning in 2018 that exceed the year 2018 milestone. In no event shall a market-based program approved under § 51.308(f) allow an emissions cap that is less stringent than the 2018 milestone, unless the milestones are replaced by a different program that meets BART and reasonable progress requirements established in § 51.308, and is approved by EPA.

(B) The implementation plan must provide a framework, including financial penalties for excess emissions based on the 2018 milestone, sufficient to ensure that the 2018 milestone will be met even if the implementation of the market trading program in paragraph (d)(4)(v) of this section has not yet been triggered, or the source allowance compliance provision of the trading program is not yet in effect.

(vii) Provisions for stationary source NO_X and PM. The implementation plan must contain any necessary long term strategies and BART requirements for stationary source PM and NO_X. Any such BART provisions may be submitted pursuant to either § 51.308(e)(1) or § 51.308(e)(2).

* * * * *

(10) Periodic implementation plan revisions. Each Transport Region State must submit to the Administrator periodic reports in the years 2013 and 2018. The progress reports must be in the form of implementation plan revisions that comply with the procedural requirements of §§ 51.102 and 51.103.

* * * * *

(f) [Reserved]

(g) Additional Class I areas. Each Transport Region State implementing the provisions of this section as the basis for demonstrating reasonable progress for mandatory Class I Federal areas other than the 16 Class I areas must include the following provisions in its implementation plan. If a Transport Region State submits an implementation plan which is approved by EPA as meeting the requirements of this section, it will be deemed to comply with the requirements for reasonable progress for the period from approval of the plan to 2018.

(1) A demonstration of expected visibility conditions for the most impaired and least impaired days at the additional mandatory Class I Federal area(s) based on emissions projections from the long-term strategies in the implementation plan. This demonstration may be based on assessments conducted by the States and/or a regional planning body.

(2) Provisions establishing reasonable progress goals and implementing any additional measures necessary to demonstrate reasonable progress for the additional mandatory Federal Class I areas. These provisions must comply with the provisions of § 51.308(d)(1) through (4).

(i) In developing long-term strategies pursuant to § 51.308(d)(3), the State may build upon the strategies implemented under paragraph (d) of this section, and take full credit for the visibility improvement achieved through these strategies.

(ii) The requirement under § 51.308(e) related to Best Available Retrofit Technology for regional haze is deemed to be satisfied for pollutants addressed by the milestones and backstop trading program if, in establishing the emission reductions milestones under paragraph (d)(4) of this section, it is shown that greater reasonable progress will be achieved for these additional Class I areas than would be achieved through the application of source-specific BART emission limitations under § 51.308(e)(1).

(iii) The Transport Region State may consider whether any strategies necessary to achieve the reasonable progress goals required by paragraph (g)(2) of this section are incompatible with the strategies implemented under paragraph (d) of this section to the extent the State adequately demonstrates that the incompatibility is related to the costs of the compliance, the time necessary for compliance, the energy and no air quality environmental impacts of compliance, or the remaining useful life of any existing source subject to such requirements.

[FR Doc. 05–14930 Filed 7–29–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
August 1, 2005

Part III

Department of the Treasury

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Department has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. Such changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses, and revisions to organizational titles. This publication also includes the new Treasury-wide system of records entitled "Treasury .012-Fiscal Service Public Key Infrastructure," published June 1, 2005, at 70 FR 31559. The notices were last published on February 19, 2002, at 67 FR 7459.

The systems notices are reprinted in their entirety following the Table of Contents.

Systems Covered by This Notice

This notice covers all systems of records adopted up to July 11, 2005.

Dated: July 21, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

Department of the Treasury

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TREASURY .001

SYSTEM NAME:

Treasury Personnel and Payroll System—Treasury.

SYSTEM LOCATION:

The Shared Development Center of the Treasury Personnel/Payroll System is located at 1750 Pennsylvania Avenue NW., Suite 1300, Washington, DC 20220. The Treasury Personnel System processing site is located at the Internal Revenue Service Detroit Computing Center, 985 Michigan Avenue, Detroit, MI 48226. The Treasury Payroll processing site is located at the United States Department of Agriculture National Finance Center, 13800 Old Gentilly Road, New Orleans, LA 70129.

The locations at which the system is maintained by all Treasury components, except the Office of Thrift Supervision, and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(8) Bureau of Public Debt (BPD): 999-E Street, NW., Washington, DC 20239.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and applicants for employment, in all Treasury Department bureaus and offices, except the Office of Thrift Supervision.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes such data as: (1) Employee identification and status data such as name, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service; (2) employment data such as service computation for leave, date probationary period began, date of performance rating, and date of within-grade increases; (3) position and pay data such as position identification number, pay plan, step, salary and pay basis, occupational series, organization location, and accounting classification codes; (4) payroll data such as earnings (overtime and night differential), deductions (Federal, state and local taxes, bonds and allotments), and time and attendance data; (5) employee retirement and Thrift Savings Plan data; (6) employment history, and (7) tables of data for editing, reporting and processing personnel and pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature block table, position title table, financial organization table, and salary tables.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; Treasury Directive 80–05, Records and Information Management Program.

PURPOSE(S):

The purposes of the system include, but are not limited to: (1) Maintaining current and historical payroll records that are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave accrued and taken, bonds due and issued, taxes paid; maintaining and distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims; and (2) maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training; classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury; and (3) maintaining employment history.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Furnish data to the Department of Agriculture, National Finance Center

(which provides payroll and personnel processing services for Treasury under a cross-servicing agreement) affecting the conversion of Treasury employee payroll and personnel processing services; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer;

(2) Furnish the Internal Revenue Service and other jurisdictions which are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(3) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(4) Furnish another Federal agency with information necessary or relevant to effect interagency salary or administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and are arguably relevant to debt collection agencies for collection services;

(5) Disclose information to a Federal, state, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(7) Disclose information to foreign governments in accordance with formal or informal international agreements;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2, which relates to civil and criminal proceedings;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(12) Provide wage and separation information to another agency, such as the Department of Labor or Social Security Administration, as required by law for payroll purposes;

(13) Provide information to a Federal, state, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state employment compensation board, housing administration agency, and Social Security Administration;

(14) Disclose pertinent information to appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing, a statute, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(15) Disclose information about particular Treasury employees to requesting agencies or non-Federal entities under approved computer matching efforts, limited only to those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other money owed under those programs (*e.g.*, matching for delinquent loans or other indebtedness to the government);

(16) Disclose to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees, for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement activities as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193);

(17) Disclose information to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department of the Treasury, when necessary to accomplish an agency function.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made pursuant to 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, Public Law 97–365; debt information concerning a government claim against an individual is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records, microfiche, and hard copy. Disbursement records are stored at the Federal Records Center.

RETRIEVABILITY:

Records are retrieved generally by social security number, position identification number within a bureau and sub-organizational element, employee identification or employee name. Secondary identifiers are used to assure accuracy of data accessed, such as master record number or date of birth.

SAFEGUARDS:

Entrances to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity.

RETENTION AND DISPOSAL:

The current payroll and personnel system and the personnel and payroll system's master files are kept as electronic media. Information rendered to hard copy in the form of reports and payroll information documentation is also retained in an electronic media format. Employee records are retained in automated form for as long as the employee is active on the system (separated employee records are maintained in an "inactive" status). Files are purged in accordance with Treasury Directive 80–05, "Records and Information Management Program."

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Director, Office of Human Resources Enterprise Solutions, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

The systems managers for the Treasury components are:

(1) a. DO: Director, Office of HR Operations for Departmental Offices, 1500 Pennsylvania Avenue, NW., Room 5202 MT, Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th Street NW., Suite 500, Washington, DC 20220.

c. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Chief, Personnel Division, 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Director, Human Resources, 250 E Street, SW., Washington, DC 20219.

(4) BEP: Chief, Office of Human Resources, 14th & C Streets, SW., Room 202–13A, E&P Annex, Washington, DC 20228.

(5) FMS: Director, Personnel Management Division, 3700 East West Hwy, Room 115–F, Hyattsville, MD 20782.

(6) IRS: Associate Director, Transactional Processing Operations, 1111 Constitution Avenue, NW., CP6, A:PS:TP, 2nd Floor, Washington, DC 20224.

(7) MINT: Assistant Director for Human Resources, 801 9th Street, NW., 7th Floor, Washington, DC 20220.

(8) BPD: Director, Human Resources Operations Division, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) FinCEN: Chief of Personnel and Training, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .002

SYSTEM NAME:

Grievance Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. These records are located in personnel or designated offices in the bureaus in which the grievances were filed. The locations at which the system is maintained are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, NW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with their bureaus in accordance with part 771 of the Office of Personnel Management's (OPM) regulations (5 CFR part 771), the Treasury Employee Grievance System (TPM Chapter 771), or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Treasury employees under part 771 of the OPM's regulations. These case files contain all documents related to the grievance including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that bureaus and/or the Department may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519; agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

PURPOSE(S):

To adjudicate employee administrative grievances filed under the authority of 5 CFR part 771 and the Department's Administrative Grievance Procedure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing in a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a Federal agency, in response to its request, in connection with the hiring or

retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court;

(6) By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) By the bureau maintaining the records of the Department in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

(8) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(9) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena, or in connection with criminal law proceedings;

(10) To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Disposed of 3 years after closing of the case. Grievances filed against disciplinary adverse actions are retained by the United States Secret Service for 4 years. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Records pertaining to administrative grievances filed at the Departmental level: Director, Office of Human Resources Strategy and Solutions, 1750 Pennsylvania Ave., NW., Suite 1200, Washington, DC 20220. Records pertaining to administrative grievances filed at the bureau level:

(1) a. DO: Director, Office of Human Resources for Departmental Offices, 1500 Pennsylvania Ave., NW., Room 5202-Main Treasury, Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th St., NW., Rm. 510, Washington, DC 20220.

c. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St., NW., Washington, DC 20220.

(3) OCC: Director, Human Resources, 250 E Street, SW., Washington, DC 20219.

(4) BEP: Chief, Office of Human Resources, 14th & C Streets, SW., Room 202–13A, E&P Annex, Washington, DC 20228.

(5) FMS: Director, Personnel Management Division, 3700 East West Hwy, Room 115–F, Hyattsville, MD 20782.

(6) IRS: Director, Office of Workforce Relations (M:S:L), 1111 Constitution Ave., NW., Room 1515IR, Washington, DC 20224.

(7) Mint: Assistant Director for Human Resources, 801 9th Street, NW., 7th Floor, Washington, DC 20220.

(8) BPD: Director, Human Resources Division, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) OTS: Director, Human Resources Division, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.

(10) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, an individual may request access to the official copy of the grievance file by contacting the bureau personnel or designated office where the action was processed. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact the bureau personnel or designated office where the grievance was processed. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .003

SYSTEM NAME:

Treasury Child Care Tuition Assistance Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, NW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Treasury who voluntarily apply for child care tuition assistance, the employee's spouse, their children and their child care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include application forms for child care tuition assistance containing personal information, including employee (parent) name, Social Security Number, pay grade, home and work numbers, addresses, telephone numbers, total family income, names of children on whose behalf the parent is applying for tuition assistance, each child's date of birth, information on child care providers used (including name, address, provider license number and State where issued, tuition cost, and provider tax identification number), and copies of IRS Form 1040 and 1040A for verification purposes. Other records may include the child's social security number, weekly expense, pay statements, records relating to direct deposits, verification of qualification and administration for the child care tuition assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106–58, section 643 and E.O. 9397.

PURPOSE(S):

To establish and verify Department of the Treasury employees' eligibility for child care subsidies in order for the Department of the Treasury to provide monetary assistance to its employees. Records are also maintained so the Department can make payments to child care providers on an employee's behalf.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department of the Treasury becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual;

(3) Disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(4) Disclose information to the National Archives and Records Administration for use in records management inspections;

(5) Disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected;

(6) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, the Office of Special Counsel, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, or cooperative agreement, or job for the Federal Government;

(8) Disclose information to a court, magistrate, or administrative tribunal when necessary and relevant in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(9) Disclose information to unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

SYSTEM MANAGER(S) AND ADDRESS:

Treasury official prescribing policies and practices: Director, Office of Human Resources Strategy and Solutions, 1750

Pennsylvania Ave., NW., Suite 1200, Department of the Treasury, Washington, DC 20220. Officials maintaining the system and records for the Treasury components are:

(1) DO:

a. Director, Office of Human Resources for Departmental Offices, 1500 Pennsylvania Ave. NW., Room 5202–MT, Washington, DC 20220.

b. Office of General Counsel: Administrative Officer, Department of the Treasury, Room 1417–MT, Washington, DC 20220.

c. OIG: Personnel Officer, 740 15th St., NW., Suite 510, Washington, DC 20220.

d. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Assistant Director, Office of Management, 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Director, Human Resources Division, Independence Square, 250 E St., SW, 4th Floor, Washington, DC 20219.

(4) BEP: Chief, Office of Human Resources. 14th & C St., SW., Room 202–13a, Washington, DC 20228.

(5) FMS: Director, Human Resources Division, PG Center II Bldg, Rm. 114f, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Director Personnel Policy Division, 1111 Constitution Ave., Building CP6—M:S:P, Washington, DC 20224.

(7) MINT: Assistant Director for Human Resources, 801 9th Street, NW., 7th Floor, Washington, DC 20220.

(8) BPD: Child Care Assistance Program (CCAP) Coordinator, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) OTS: Director, Human Resources Division, 1700 G St., NW., 2nd Floor, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is provided by Department of the Treasury employees who apply for child care tuition assistance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .004

SYSTEM NAME:

Freedom of Information Act/Privacy Act Request Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO), which includes the Office of Inspector General (OIG), and the Treasury Inspector General for Tax Administration (TIGTA);

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB);

(3) Office of the Comptroller of the Currency (OCC);

(4) Bureau of Engraving and Printing (BEP);

(5) Financial Management Service (FMS);

(6) United States Mint (MINT);

(7) Bureau of the Public Debt (BPD);

(8) Office of Thrift Supervision (OTS);

(9) Financial Crimes Enforcement Network (FinCEN).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have: (1) Requested access to records pursuant to the Freedom of Information Act, 5 U.S.C. 552, (FOIA) or who have appealed initial denials of their requests; and/or (2) made a request for access, amendment or other action pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for records or information pursuant to the FOIA and/or PA which includes the names of individuals making written requests for records under the FOIA or the PA, the mailing addresses of such individuals, and the dates of such requests and their receipt. Supporting records include the written correspondence received from requesters and responses made to such requests; internal processing documents and memoranda, referrals and copies of records provided or withheld, and may include legal memoranda and opinions. Comparable records are maintained in this system with respect to any appeals made from initial denials of access, refusal to amend records and lawsuits under the FOIA/PA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552; Privacy Act of 1974, 5 U.S.C. 552a; and 5 U.S.C. 301.

PURPOSE(S):

The system is used by officials to administratively control and/or process requests for records to ensure compliance with the FOIA/PA and to collect data for the annual and biennial reporting requirements of the FOIA/PA and other Department management report requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, foreign, State, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Disclose information to another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(5) The Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the

agency to be relevant and necessary to the litigation;

(6) Disclose information to the appropriate foreign, State, local, tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

(7) Disclose information to contractors and other agents who have been engaged by the Department or one of its bureaus to provide products or services associated with the Department's or bureau's responsibility arising under the FOIA/PA;

(8) Disclose information to the National Archives and Records Administration for use in records management inspections.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, computer paper printout, index file cards, and paper records in file folders.

RETRIEVABILITY:

Retrieved by name, subject, request file number or other data element as may be permitted by an automated system.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual bureaus. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records pertaining to Freedom of Information Act and Privacy Act requests are retained and disposed of in accordance with the National Archives and Records Administration's General Record Schedule 14—Information Services Records.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices—Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

The system managers for the Treasury components are:

1. (a) DO: Director, Disclosure Services, Department of the Treasury, Washington, DC 20220.

(b) TIGTA: Disclosure Officer, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

2. Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

3. BEP: Disclosure Officer, FOIA Office, 14th & C Streets, SW., Washington, DC 20228.

5. FMS: Disclosure Officer, 401 14th Street, SW., Washington, DC 20227.

6. Mint: Disclosure Officer, Judiciary Square Building, 801 9th Street, NW., Washington, DC 20220.

7. OCC: Disclosure Officer, Communications Division, Washington, DC 20219.

9. BPD: Information Disclosure Officer, 999 E Street, NW., Washington, DC 20239.

11. OTS: Manager, Dissemination Branch, 1700 G Street, NW., Washington, DC 20552.

12. Financial Crimes Enforcement Network (FinCEN), P.O. Box 39, Vienna, VA 22182.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A-M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these files originates from individuals who make FOIA/PA requests and agency officials responding to those requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None. The Department has claimed one or more exemptions (see 31 CFR 1.36) for a number of its other systems of records under 5 U.S.C. 552a (j)(2) and (k)(1), (2), (3), (4), (5), and (6). During the course of a FOIA/PA action, exempt materials from those other systems may become a part of the case records in this system. To the extent that copies of exempt records from those other systems have been recompiled and/or entered into these FOIA/PA case records, the Department claims the same exemptions for the records as they have in the original primary systems of records of which they are a part.

TREASURY .005

SYSTEM NAME:

Public Transportation Incentive Program Records-Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW., Washington, DC 20220. b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC. 20220. c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th St. NW., Washington, Dc 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22182.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have applied for or who participate in the Public Transportation Incentive Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Public Transportation Incentive Program application form containing the participant's name, last four digits of the social security number, or for IRS employees the Standard Employee Identifier (SEID) issued by the IRS, place of residence, office address, office telephone, grade level, duty hours, previous method of transportation, costs of transportation, and the type of fare incentive requested. Incentives authorized under the Federal Workforce Transportation Program may be included in this program.

(2) Reports submitted to the Department of the Treasury in

accordance with Treasury Directive 74–10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 26 U.S.C. 132(f), and Public Law 101–509.

PURPOSE(S):

The records are used to administer the public transportation incentive or subsidy programs provided by Treasury bureaus for eligible employees. The system also enables the Department to compare these records with other Federal agencies to ensure that employee transportation programs benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a court-ordered subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and/or 7114;

(5) Agencies, contractors, and others to administer Federal personnel or payroll systems, and for debt collection and employment or security investigations;

(6) Other Federal agencies for matching to ensure that employees receiving PTI Program benefits are not listed as a carpool or vanpool participant, the holder of a parking permit; and to prevent the program from being abused;

(7) The Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) The Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and the Federal Labor Relations Authority or other third parties when mandated or authorized by statute; and

(9) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and/or electronic media.

RETRIEVABILITY:

By name of individual, badge number or office.

SAFEGUARDS:

Access is limited to authorized employees. Files are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

RETENTION AND DISPOSAL:

Active records are retained indefinitely. Inactive records are held for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury bureaus are:

(1) Departmental Offices:

a. Director, Occupational Safety and Health Office, Room 6204 Annex, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. Office of Inspector General: Office of Assistant Inspector for Management Services, Office of Administrative Services, Suite 510, 740 15th St. NW., Washington, DC 20220.

C. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St., NW., Washington, DC 20220.

(3) BEP: Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

(4) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

(5) FMS: Director, Administrative Programs Division, Financial Management Service, 3700 East West Hwy., Room 144, Hyattsville, MD 20782.

(6) IRS: Official prescribing policies and practices—Chief, National Office, Protective Program Staff, Director, Personnel Policy Division, 2221 S. Clark Street-CP6, Arlington, VA 20224. Officials maintaining the system—Supervisor of local offices where the records reside. (See IRS Appendix A for addresses.)

(7) Mint: Office of Management Services (OMS), 801 9th St. NW., Washington, DC 20220.

(8) BPD: Director, Division of Administrative Services, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) OTS: Director, Planning, Budget and Finance, Office of Thrift Supervision, Department of the Treasury, 1700 G Street, NW., Washington, DC 20552.

(10) FinCEN: Director, P. O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A-M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The source of the data are employees who have applied for the transportation incentive, the incentive program managers and other appropriate agency officials, or other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .006

SYSTEM NAME:

Parking and Carpool Program Records—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW.,

Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): 799 E Street, NW., Washington, DC 20239.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department and individuals from other Government agencies or private sector organizations who may use, or apply to use, parking facilities or spaces controlled by the Department. Individuals utilizing handicapped or temporary guest parking controlled by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the name, position title, manager's name, organization, vehicle identification, arrival and departure time, home addresses, office telephone numbers, social security numbers, badge number, and service computation date or length of service with a component of an individual or principal carpool applicant. Contains name, place of employment, duty telephone, vehicle license number and service computation date of applicants, individuals or carpool members. For parking spaces, permit number, priority group (handicapped, job requirements/ executive officials (SES) or carpool/ vanpool). Medical information may also be included when necessary to determine disability of applicant when applying for handicapped parking spaces.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Treasury Department Order No. 165, revised as amended. Federal Property and Administrative Services Act of 1949, as amended.

PURPOSE(S):

The records are used to administer parking, carpool and vanpool programs within the Department. The system enables the Department to allocate and check parking spaces assigned to government or privately-owned vehicles operated by visitors, handicapped personnel, key personnel, employees eligible to participate in a parking program and carpools or vanpools. The Department is also able to compare these records with other Federal agencies to ensure parking privileges or other employee transportation benefits are not abused.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) A physician for making a determination on a person's eligibility for handicapped parking;

(4) A contractor who needs to have access to this system of records to perform an assigned activity;

(5) Parking coordinators of Government agencies and private sector organizations for verification of employment and participation of pool members;

(6) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) Third parties when mandated or authorized by statute or when necessary to obtain information that is relevant to an inquiry concerned with the possible abuse of parking privileges or other employee transportation benefits;

(9) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding, and

(10) Officials of the Merit Systems Protection Board, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission or the Office of Personnel Management when requested in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and/or electronic media.

RETRIEVABILITY:

Name, address, social security number, badge number, permit number, vehicle tag number, and agency name or organization code on either the applicant or pool members as needed by a bureau. Records are filed alphabetically by location.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access. Protection and control of sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual bureaus. The IRS access controls will not be less than those provided by the Automated Information System Security Handbook,

IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

RETENTION AND DISPOSAL:

Generally, record maintenance and disposal is in accordance with NARA General Retention Schedule 11, and any supplemental guidance issued by individual components. Disposal of manual records is by shredding or burning; electronic data is erased. Destroyed upon change in, or revocation of, parking assignment.

For the IRS, records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, Item 4(a), IRM 1(15)59.31.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Treasury components are:

(1) DO:

a. Director, Occupational Safety and Health Office, Room 6204 Annex, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. OIG: Director, Administrative Services Division, Office of Management Services, Room 510, 740 15th Street, NW., Washington, DC 20220.

c. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219;

(4) BEP: Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

(5) FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Chief, Security and Safety Branch; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and Computing Center Directors. (See IRS Appendix A for addresses.)

(7) MINT: Associate Director for Protection, 801 9th St. NW., Washington, DC 20220.

(8) BPD: Director, Washington Support Services, Bureau of the Public Debt, 799 E Street, NW., Washington, DC 0239.

(9) OTS: Director, Procurement and Administrative Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A-M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Parking permit applicants, members of carpools or vanpools, other Federal agencies, medical doctor if disability determination is requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .007

SYSTEM NAME:

Personnel Security System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3180 Annex, Washington, DC 20220. Other locations at which the system is maintained by Treasury bureaus and their associated offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave., NW., Washington, DC 20220.

c. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219--0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(7) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(8) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183--0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former government employees, applicants and contractor employees occupying or applying for sensitive positions in the Department, (2) current and former senior officials of the Department and Treasury bureaus, and those within the Department who are involved in personnel security matters, and (3) current employees, applicants and contractor employees who are appealing a denial or a revocation of a security clearance.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Background investigations, (2) FBI and other agency name checks, (3) investigative information relating to personnel investigations conducted by the Department of the Treasury and other Federal agencies and departments on a pre-placement and post-placement basis to make suitability and employability determinations and for granting security clearances, (4) card records comprised of Notice of Personnel Security Investigation (TD F 67--32.2) or similar previously used card indexes, and (5) an automated data system reflecting identification data on applicants, incumbents and former employees, disclosure and authorization forms, and record of investigations, level and date of security clearance, if any, as well as status of investigations, and (6) records pertaining to the appeal of a denial or a revocation of a security clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2 and 3, Executive Order 12958, and Executive Order 12968.

PURPOSE(S):

This system is used to maintain records that assure the Department is upholding the highest standards of integrity, loyalty, conduct, and security among its personnel and contract employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant

or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) The Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations; and

(7) Unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, index cards, and magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Paper records are stored in locked metal containers and in locked rooms. Electronic records are password protected. Access is limited to officials who have a need to know in the performance of their official duties and whose background investigations have been favorably adjudicated.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on applicants not selected and separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Director of Security, 1500 Pennsylvania Avenue, NW., Room 3180 Annex, Washington, DC 20220.

The system managers for the Treasury components are:

(1) DO:

a. Director of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th St., NW., Suite 510, Washington, DC 20220.

c. TIGTA: Security Officer, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G St., NW., Washington, DC 20220.

(3) BPD: Director, Division of Administrative Services, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(4) OCC: Director, Administrative Services Division, 250 E Street, SW., Washington, DC 20219.

(5) BEP: Chief, Office of Security, 14th & C Streets, NW., Room 113M, Washington, DC 20228.

(6) FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

(7) Mint: Associate Director for Protection, 801 9th Street, NW., Washington, DC 20220.

(8) OTS: Director, Procurement and Administrative Services, 1700 G Street, NW., Washington, DC 20552.

(9) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information provided or verified by applicants or employees whose files are on record as authorized by those concerned, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). (See 31 CFR 1.36.)

TREASURY .008

SYSTEM NAME:

Treasury Emergency Management System.

SYSTEM LOCATION:

Department of the Treasury, Annex Building, Room 3180, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Other locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Treasury employees, contractors, and Treasury Emergency Executive Reservists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Treasury employees, contractors, or Treasury Emergency Executive Reservists identification number, social security number, first name and middle initial, last name, job title, government and home addresses (city, state, zip code, zip code extension), home telephone number, work telephone number, alternate telephone number (*e.g.*, pager, cellular phone), work shift, email addresses, office code, office name, gender and other employee attributes, date of birth, place of birth, and related personnel security clearance information, emergency team assignment and emergency team location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Executive Order 12656, section 201 and part 15, Executive Order 12472, Presidential Decision Directive 67.

PURPOSE(S):

The purpose of this system of records is to support the development of and maintain a continuity of operations plans (COOP) for the Department and its component bureaus. COOP activities involve ensuring the continuity of minimum essential Department of the Treasury functions through plans and procedures governing succession to office and the emergency delegation of authority (where permissible). Vital records and critical information pertaining to all current employees, contractors, and Treasury Emergency Executive Reservists will be gathered and stored in an emergency employee locator system. This data will be used for alert and notification purposes, determining team and task assignments, developing and maintaining an emergency contact system for general emergency preparedness programs and specific situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose pertinent information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Disclose information to the Federal Emergency Management Agency (FEMA) or other agency with national security and emergency preparedness responsibilities in order to carry out continuity of government activities;

(4) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury (agency) is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(6) Disclose information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Disclose information to a contractor for the purpose of processing administrative records and/or compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(8) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding;

(9) Disclose information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor management program for the purpose of processing any corrective actions or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) Disclose information to a telecommunications company providing telecommunications support to permit servicing the account;

(11) Disclose information to representatives of the General Services Administration (GSA) or the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in hardcopy and electronic media.

RETRIEVABILITY:

Records can be retrieved by name, or by the categories listed above under "Categories of records in the system."

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. The files and magnetic media are secured in locked rooms. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information and have been subject to a background check and/or have a security clearance.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Director, Office of Security, Department of the Treasury, Washington, DC 20220.

The system managers for the Treasury components are:

(1) a. DO: Director of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

b. OIG: Personnel Officer, 740 15th St., NW., Suite 510, Washington, DC 20220.

c. TIGTA: Special Agent in Charge (SIID), 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Director, Administrative Services Division, 250 E Street, SW., Washington, DC 20219.

(4) BEP: Director of Security, 14th & C Streets, NW., Room 113M, Washington, DC 20228.

(5) FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Director, Security Standards and Evaluation, 5000 Ellin Road, Lanham, MD 20706.

(7) BPD: Executive Director, Administrative Resources Center, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(8) Mint: Associate Director for Protection, 801 9th Street, NW., Washington, DC 20220.

(9) OTS: Director, Procurement and Administrative Services, 1700 G Street, NW., Washington, DC 20552.

(10) FinCEN: Director, P. O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See "Notification procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is obtained from current Treasury employees, contractors, Treasury Emergency Executive Reservists, and Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .009

SYSTEM NAME:

Treasury Financial Management Systems—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. Financial Management Division, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

d. Community Development Financial Institutions Fund (CDFI): 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

e. Federal Financing Bank (FFB): 1500 Pennsylvania Avenue, NW., South Court One, Washington, DC 20220.

g. Office of International Affairs (IA): 1500 Pennsylvania Avenue, NW., Room 5441D, Washington, DC 20220.

h. Treasury Forfeiture Fund: 740 15th Street, NW., Suite 700, Washington, DC 20220.

i. Treasury Franchise Fund: 1500 Pennsylvania Ave. NW., Attn: Met Square Rm. 6253, Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, NW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former Treasury employees, non-Treasury personnel on detail to the Department, current and former vendors, all debtors including employees or former employees; (2) persons paying for goods or services, returning overpayment or otherwise delivering cash; (3) individuals, private institutions and business entities who are currently doing business with, or who have previously conducted business with the Department of the Treasury to provide various goods and services; (4) individuals who are now or were previously involved in tort claims with Treasury; (5) individuals who are now or have previously been involved in payments (accounts receivable/revenue) with Treasury; and (6) individuals who have been recipients of awards. Only records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations, other business entities, and organizations whose records are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The financial systems used by the Treasury components to collect, maintain and disseminate information include the following types of records: Routine billing, payment, property accountability, and travel information used in accounting and financial processing; administrative claims by employees for lost or damaged property; administrative accounting documents, such as relocation documents, purchase orders, vendor invoices, checks, reimbursement documents, transaction amounts, goods and services descriptions, returned overpayments, or otherwise delivering cash, reasons for payment and debt, travel-related documents, training records, uniform allowances, payroll information, student intern documents, etc., which reflect amount owed by or to an individual for payments to or receipt from business firms, private citizens and or institutions. Typically, these documents include the individual's name, social security number, address, and taxpayer identification number. Records in the system also include employment data, payroll data, position and pay data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 31 U.S.C. 3711, 31 U.S.C. 3721, 5 U.S.C. 5701 et seq., 5 U.S.C. 4111(b), Pub. L. 97–365, 26 U.S.C. 6103(m)(2), 5 U.S.C. 5514, 31 U.S.C. 3716, 31 U.S.C. 321, 5 U.S.C. 301, 5 U.S.C. 4101 et seq., 41 CFR parts 301–304, EO 11348, and Treasury Order 140–01.

PURPOSE(S):

The Treasury Integrated Financial Management and Revenue System is to account for and control appropriated resources; maintain accounting and financial information associated with the normal operations of government organizations such as billing and follow-up, for paying creditors, to account for

goods and services provided and received, to account for monies paid and received, process travel authorizations and claims, process training claims, and process employee claims for lost or damaged property. The records management and statistical analysis subsystems provide a data source for the production of reports, statistical surveys, documentation and studies required for integrated internal management reporting of costs associated with the Department's operation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information: (1) To appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To the Department of Justice when seeking legal advice, or when (a) the agency or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records;

(3) To a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) In a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) or any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (e) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) To the news media in accordance with guidelines contained in 28 CFR 50.2 which pertain to an agency's functions relating to civil and criminal proceedings;

(7) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(8) To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed;

(9) To a contractor for the purpose of compiling, organizing, analyzing, programming, processing, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(10) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(11) Through a computer matching program, information on individuals owing debts to the Department of the Treasury, or any of its components, to other Federal agencies for the purpose of determining whether the debtor is a Federal employee or retiree receiving payments which may be used to collect the debt through administrative or salary offset;

(12) To other Federal agencies to effect salary or administrative offset for the purpose of collecting debts, except that addresses obtained from the IRS shall not be disclosed to other agencies;

(13) To disclose information to a consumer reporting agency, including mailing addresses obtained from the Internal Revenue Service, to obtain credit reports;

(14) To a debt collection agency, including mailing addresses obtained from the Internal Revenue Service, for debt collection services;

(15) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(16) To a public or professional auditing organization for the purpose of conducting financial audit and/or compliance audits;

(17) To a student participating in a Treasury student volunteer program, where such disclosure is necessary to support program functions of Treasury, and

(18) To insurance companies or other appropriate third parties, including common carriers and warehousemen, in the course of settling an employee's claim for lost or damaged property filed with the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures made pursuant to 5 U.S.C. 552a(b)(12): Debt information concerning a government claim against an individual may be furnished in accordance with 5 U.S.C. 552a(b)(12) and section 3 of the Debt Collection Act of 1982 (Pub. L. 97–365) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microform and electronic media.

RETRIEVABILITY:

Name, social security number, vendor ID number, and document number (travel form, training form, purchase order, check, invoice, *etc.*).

SAFEGUARDS:

Protection and control of sensitive but unclassified (SBU) records in this system is in accordance with TD P 71–10, Department of the Treasury Security

Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Record maintenance and disposal is in accordance with National Archives and Records Administration retention schedules, and any supplemental guidance issued by individual components.

SYSTEM MANAGER(S) AND ADDRESS:

(1) DO: a. Director, Financial Management Division, 1500 Pennsylvania Avenue, NW., Attn: 1310 G Street, 2nd floor, Washington, DC 20220.

b. OIG: Assistant Inspector General for Management Services, 740 15th St., NW., Suite 510, Washington, DC 20220.

c. TIGTA: Chief Financial Officer, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

d. CDFI Fund: Deputy Director for Management/CFO, 601 13th Street, NW., Suite 200 South, Washington, DC 20005.

e. FFB: Chief Financial Officer, 1500 Pennsylvania Avenue, NW., South Court One, Washington, DC 20220.

g. IA: Financial Manager, 1500 Pennsylvania Avenue, NW., Room 5441D, Washington, DC 20220.

h. Treasury Forfeiture Fund: Assistant Director for Financial Management/ CFO, 740 15th Street, NW., Suite 700, Washington, DC 20220.

i. Treasury Franchise Fund: Managing Director, 1500 Pennsylvania Ave., NW., Attn: Met Square Rm. 6253, Washington, DC 20220.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G. St., NW., Washington, DC 20220.

(3) IRS: Chief Financial Officer, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 3013, Washington, DC 20224.

(4) BPD: Director, Division of Financial Management, Bureau of Public Debt, Avery Street Building, 320 Avery Street, Parkersburg, WV.

(5) OCC: Chief Financial Officer, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

(6) BEP: Chief Financial Officer, Bureau of Engraving and Printing, 14th and C Streets, NW., Room 113M, Washington, DC 20228.

(7) FMS: Chief Financial Officer, Financial Management Service, 3700 East West Highway, Room 106A, Hyattsville, MD 20782.

(8) Mint: Chief Financial Officer, United States Mint, 801 9th Street, NW., 7th Floor, Washington, DC 20220.

(9) OTS: Controller, Office of Thrift Supervision, 1700 G Street, NW., Third Floor, Washington, DC 20552.

(10) FinCEN: Director, P. O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, private firms, other government agencies, contractors, documents submitted to or received from a budget, accounting, travel, training or other office maintaining the records in the performance of their duties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY 010

SYSTEM NAME:

Telephone Call Detail Records-Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. The locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. Treasury Inspector General for Tax Administration TIGTA): 1125 15th St., NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, NW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Crimes Enforcement Network (FinCEN) Vienna, Virginia 22182.

(6) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(7) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(8) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(9) Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

(10) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make local and/or long distance calls, individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Department telephones to place local and/or long distance calls, whether through the Federal Telecommunications System (FTS), commercial systems, or similar systems; including voice, data, and videoconference usage; telephone calling card numbers assigned to employees; records of any charges billed to Department telephones; records relating to location of Department telephones; and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls. Telephone calls made to any Treasury Office of Inspector General Hotline numbers are excluded from the records maintained in this system pursuant to the provisions of 5 U.S.C., Appendix 3, Section 7(b) (Inspector General Act of 1978).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 481, 5 U.S.C. 301 and 41 CFR 201–21.6.

PURPOSE(S):

The Department, in accordance with 41 CFR 201–21.6, Use of Government Telephone Systems, established the Telephone Call Detail program to enable it to analyze call detail information for verifying call usage, to determine responsibility for placement of specific long distance calls, and for detecting possible abuse of the government-provided long distance network.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be disclosed: (1) To representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906;

(2) To employees or contractors of the agency to determine individual responsibility for telephone calls;

(3) To appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(4) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings where relevant and necessary;

(5) To a telecommunications company providing telecommunication support to permit servicing the account;

(6) To another Federal agency to effect an interagency salary offset, or an interagency administrative offset, or to a debt collection agency for debt collection services. Mailing addresses acquired from the Internal Revenue Service may be released to debt collection agencies for collection services, but shall not be disclosed to other government agencies;

(7) To the Department of Justice for the purpose of litigating an action or seeking legal advice;

(8) In a proceeding before a court, adjudicative body, or other administrative body, before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to the litigation or has an interest in such litigation, and the use of such records by the agency is deemed relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(9) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(10) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties;

(11) To the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service, and other Federal agencies through authorized computer matching programs to identify and locate individuals who are delinquent in their repayment of debts owed to the Department, or one of its components, in order to collect a debt through salary or administrative offsets;

(12) In response to a Federal agency's request made in connection with the hiring or retention of an individual, issuance of a security clearance, license, contract, grant, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 522a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Microform, electronic media, and/or hard copy media.

RETRIEVABILITY:

Records may be retrieved by: Individual name; component headquarters and field offices; by originating or terminating telephone number; telephone calling card numbers; time of day; identification number, or assigned telephone number.

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual components.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration General Records Schedule 3. Hard copy and microform media disposed by shredding or incineration. Electronic media erased electronically.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices—Director, Customer Services Infrastructure and Operations, Department of the Treasury, Room 2150, 1425 New York Avenue, NW., Washington, DC 20220. The system managers for the Treasury components are:

(1) a. DO: Chief, Telecommunications Branch, Automated Systems Division, Room 1121, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

b. TIGTA: Director, Human Resources, 1125 15th St., NW., Suite 700A, Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Associate Director, Telecommunications, Systems Support Division, Office of the Comptroller of the Currency, 835 Brightseat Road, Landover, MD 20785.

(4) BEP: Deputy Associate Director (Chief Information Officer), Office of Information Systems, Bureau of Engraving and Printing, Room 711A, 14th and C Street, SW., Washington, DC 20228.

(5) FMS: Director, Platform Engineering Division, 3700 East West Highway, Hyattsville, MD 20782.

(6) IRS: Official prescribing policies and practices: National Director, Operations and Customer Support, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Office maintaining the system: Director, Detroit Computing Center, (DCC), 1300 John C. Lodge Drive, Detroit, MI 48226.

(7) Mint: Assistant Director for Information Technology, 801 9th Street, NW., Washington, DC 20220.

(8) BPD: Official prescribing policies and practices: Assistant Commissioner (Office of Information Technology), Avery Street Building, 320 Avery Street, Parkersburg, WV. Office maintaining the system: Division of Communication, 200 Third Street, Parkersburg, WV 26106–1328.

(9) OTS: Director, Information Systems, Administration and Finance, 1700 G Street, NW., 2nd Floor, Washington, DC 20552.

(10) FinCEN: Director, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–M.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Telephone assignment records, call detail listings, results of administrative inquiries to individual employees, contractors or offices relating to assignment of responsibility for placement of specific long distance or local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .011

SYSTEM NAME:

Treasury Safety Incident Management Information System (SIMIS)—Treasury.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Other locations at which the system is maintained by Treasury components and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Washington, DC 20005.

d. Community Development Financial Institutions Fund (CDFI): 601 13th Street, NW., Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the currency (OCC): 250 E Street, SW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW., Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101, and Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) Office of Thrift Supervision (OTS): 1700 G Street, NW., Washington, DC 20552.

(10) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past Treasury employees and contractors who are injured on Department of the Treasury property or while in the performance of their duties offsite. Members of the public who are injured on Department of the Treasury property are also included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system pertain to medical injuries and occupational illnesses of employees which include social security numbers, full names, job titles, government and home addresses (city, state, zip code), home telephone numbers, work telephone numbers, work shifts, location codes, and gender. Mishap information on environmental incidents, vehicle accidents, property losses and tort claims will be included also. In addition, there will be records such as results of investigations, corrective actions, supervisory information, safety representatives names, data as to chemicals used, processes affected, causes of losses, etc. Records relating to contractors include full name, job title, work addresses (city, state, zip code), work telephone number, location codes, and gender. Records pertaining to a member of the public include full name, home address (city, state, zip code), home telephone number, location codes and gender. (Official compensation claim file, maintained by the Department of Labor's Office of Workers' Compensation Programs (OWCP) is part of that agency's system of records and not covered by this notice.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Executive Order 12196, section 1–2.

PURPOSE(S):

This system of records supports the development and maintenance of a Treasury-wide incident tracking and reporting system and will make it possible to streamline a cumbersome paper process. Current web technology will be employed and facilitate obtaining real-time data and reports related to injuries and illnesses. As an enterprise system for the Department and its component bureaus, incidents analyses can be performed instantly to affect a more immediate implementation of corrective actions and to prevent future occurrences. Information pertaining to past and all current employees and contractors injured on Treasury property or while in the performance of their duties offsite, as well as members of the public injured while on Federal property, will be gathered and stored in SIMIS. This data will be used for analytical purposes such as trend analysis, and the forecasting/projecting of incidents. The data will be used to generate graphical reports resulting from the analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose pertinent information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Disclose information to the Office of Workers' Compensation Programs, Department of Labor, which is responsible for the administration of the Federal Employees' Worker Compensation Act (FECA);

(4) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury (agency) is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative

proceeding and not otherwise privileged;

(6) Disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Disclose information to a contractor for the purpose of processing administrative records and/or compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(8) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding;

(9) Disclose information to unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, arbitrators, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor management program for the purpose of processing any corrective actions or grievances or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(11) Disclose information to a Federal, State, or local public health service agency as required by applicable law, concerning individuals who have contracted or who have been exposed to certain communicable diseases or conditions. Such information is used to prevent further outbreak of the disease or condition;

(12) Disclose information to representatives of the General Services Administration (GSA) or the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in hardcopy and electronic media.

RETRIEVABILITY:

Records can be retrieved by name, or by categories listed above under "Categories of records in the system."

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 7110, Department of the Treasury Security Manual. The hardcopy files and electronic media are secured in locked rooms. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information and have been subject to a background check and/or security clearance.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury official prescribing policies and practices: Director, Office of Safety, Health and Environment, Department of the Treasury, Washington, DC 20220. The system managers for the Treasury components are:

(1) DO: a. Director, Occupational Safety and Health Office, Room 6204 Annex, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. OIG: Safety and Occupational Health Manager, 740 15th Street, NW., Washington, DC 20220.

c. TIGTA: Director, Human Resources, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

d. CDFI: Safety and Occupational Health Manager, 601 13th Street, NW., Washington, DC 20005.

(2) TTB: Alcohol and Tobacco Tax and Trade Bureau: 1310 G. St., NW., Washington, DC 20220.

(3) OCC: Safety and Occupational Health Manager, 250 E Street, SW., Washington, DC 20219–0001.

(4) BEP: Safety and Occupational Health Manager, 14th & C Streets, SW., Washington, DC 20228.

(5) FMS: Safety and Occupational Health Manager, PG 3700 East-West Highway, Hyattsville, MD 20782.

(6) IRS: Safety and Occupational Health Manager, 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) MINT: Safety and Occupational Health Manager, 801 9th Street, NW., Washington, DC 20220.

(8) BPD: Administrative Support Branch Manager, 200 Third Street, Parkersburg, WV., and Avery Street Building, 320 Avery Street, Parkersburg, WV.

(9) OTS: Safety and Occupational Health Manager, 1700 G Street, NW., Washington, DC 20552.

(10) FinCEN: Safety and Occupational Health Manager, P.O. Box 39, Vienna, VA 22183–0039.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices, A–L.

RECORD ACCESS PROCEDURES:

See "Notification procedures" above.

Contesting record procedures: See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is obtained from current Treasury employees, contractors, members of the public, witnesses, medical providers, and relevant industry experts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY .012

SYSTEM NAME:

Fiscal Service Public Key Infrastructure—Treasury.

SYSTEM LOCATION:

The system of records is located at:

(1) The Bureau of the Public Debt (BPD), U.S. Department of the Treasury, in Parkersburg, WV, and,

(2) The Financial Management Service (FMS), U.S. Department of the Treasury, Washington, DC, and Hyattsville, MD. The system managers maintain the system location of these records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Digital certificates may be issued to any of the following individuals: A Federal agency certifying officer who authorizes vouchers for payment; Federal employees who approve the grantees' accounts; an individual authorized by a state or grantee organization to conduct business with the Fiscal Service; employees of the Fiscal Service; fiscal agents; and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information needed to establish accountability and audit control of digital certificates. It also contains records that are needed to

authorize an individual's access to a Treasury network. Depending on the service(s) requested by the customer, information may also include:

Personal identifiers—name, including previous name used, and aliases; organization, employer name and address; Social Security number, Tax Identification Number; physical and electronic addresses; telephone, fax, and pager numbers; bank account information (name, type, account number, routing/transit number); Federal-issued photograph ID; driver's license information or state ID information (number, state, and expiration date); military ID information (number, branch, expiration date); or passport/visa information (number, expiration date, and issuing country).

Authentication aids—personal identification number, password, account number, shared-secret identifier, digitized signature, other unique identifier.

The system contains records on public key data related to the customer, including the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 321, and the Government Paperwork Elimination Act, Pub. L. 105–277.

PURPOSES:

We are establishing the Fiscal Service Public Key Infrastructure System to:

(1) Use electronic transactions and authentication techniques in accordance with the Government Paperwork Elimination Act;

(2) Facilitate transactions involving the transfer of information, the transfer of funds, or where parties commit to actions or contracts that may give rise to financial or legal liability, where the information is protected under the Privacy Act of 1974, as amended;

(3) Maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, and between Federal employees or contractors, by using digital signature technologies to authenticate and verify identity;

(4) Provide mechanisms for non-repudiation of personal identification and access to Treasury systems including, but not limited to SPS and ASAP; and

(5) Maintain records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for purpose of the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena;

(4) A Federal, State, local or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's, hiring or retention of an individual, or issuance of a security clearance, license, contract, grant or other benefit;

(5) Agents or contractors who have been engaged to assist the Department in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;

(6) The Department of Justice when seeking legal advice or when (a) the Department of the Treasury or (b) the disclosing agency, or (c) any employee of the disclosing agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the disclosing agency determines that litigation is likely to affect the disclosing agency, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; and

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic media, multiple client-server platforms that are backed-up to magnetic tape or other storage media, and/or hard copy.

RETRIEVABILITY:

Records may be retrieved by name, alias name, Social Security number, Tax Identification Number, account number, or other unique identifier.

SAFEGUARDS:

These records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols which are periodically changed. Only employees whose official duties require access are allowed to view, administer, and control these records. Copies of records maintained on computer have the same limited access as paper records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

SYSTEM MANAGERS AND ADDRESSES:

(1) Assistant Commissioner, Office of Information Technology, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101, and,

(2) Assistant Commissioner, Information Resources, and Chief Information Officer, Financial Management Service, 3700 East West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C:

Appendix I for records within the custody of the Bureau of the Public Debt, and,

Appendix G for records within the custody of the Financial Management Service.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in this system is provided by or verified by the subject individual of the record, as well as Federal and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–14901 Filed 7–29–05; 8:45 am]

BILLING CODE 4811–33–P

Federal Register

Monday,
August 1, 2005

Part IV

Department of the Interior

Fish and Wildlife Services

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2005–06 early-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. Early seasons may open as early as September 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands. These frameworks are necessary to allow State selections of specific final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for late-season migratory bird hunting and the 2006 spring/summer migratory bird subsistence seasons in Alaska on July 27 and 28, 2005. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by August 11, 2005, and for the forthcoming proposed late-season frameworks by August 30, 2005.

ADDRESSES: The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

This document, the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations, deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2005–06 season. We have considered all pertinent comments received through June 30, 2005, on the April 6 and June 24, 2005, rulemaking documents in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES.** We will publish final regulatory frameworks for early seasons in the **Federal Register** on or about August 20, 2005.

Service Migratory Bird Regulations Committee Meetings

Participants at the June 22–23, 2005, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2005–06 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 27–28, 2005, meetings will review information on the current status of waterfowl and develop recommendations for the 2005–06 regulations pertaining to regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings are open to public observation and you may submit written comments to the Director of the Service on the matters discussed.

Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

May Breeding Waterfowl and Habitat Survey

Habitat conditions at the time of the survey in May were variable. Habitat on the U.S. prairies was in fair to poor condition due to a dry fall, winter, and early spring and warm winter temperatures. Nesting habitat was particularly poor in South Dakota because of below average precipitation resulting in degraded wetland conditions and increased tilling and grazing of wetland margins. Water levels and upland nesting cover were better in North Dakota and eastern Montana and wetland conditions in these regions improved markedly during June, with the onset of well-above average precipitation. The 2005 pond estimate for the northcentral U.S. (1.5 million) was similar to last year.

The prairies of southern Alberta and southwestern Saskatchewan were also quite dry at the beginning of the survey in early May. The U.S. and Canadian prairies received substantial rain in late May and during the entire month of June that recharged wetlands and encouraged growth of vegetation. While this improved habitat quality on the prairies, it probably came too late to benefit early-nesting species or prevent overflight. Rains likely improved habitat conditions for late nesting species and for renesting efforts. In contrast, the Canadian Parklands were much improved compared to last year, due to a combination of several years of improving nesting cover and above-normal precipitation last fall and winter. These areas were in good-to-

excellent condition and conditions have remained good through early summer. Record high levels of rain did flood portions of lower elevation prairie areas of central Manitoba during April, producing fair or poor nesting conditions for breeding waterfowl in some areas.

Overall, the pond estimate in the Canadian prairies and parklands and the U.S. prairies (5.4 million ponds) increased 37% over last year and was 12% higher than the long-term average. The estimate of ponds in the Canadian prairies and parklands was 3.9 million. This was a 56% increase over last year and 17% higher than the long-term average.

Portions of northern Manitoba and northern Saskatchewan also experienced flooding, resulting in only fair conditions for breeding waterfowl. Most of the Northwest Territories was in good condition due to adequate water and a timely spring break up that made habitat available to early-nesting species. However, dry conditions in eastern parts of the Northwest Territories and northeastern Alberta resulted in low water levels in lakes and ponds and the complete drying of some wetlands. Thus, habitat was classified as fair in these areas. Alaska was in mostly excellent condition, with an early spring and good water, except for a few flooded river areas and the North Slope, where spring was late.

In the Eastern Survey area, habitat conditions were good due to adequate water and relatively mild spring temperatures. The exceptions were the coast of Maine and the Maritimes, where May temperatures were cool and some flooding occurred along the coast and major rivers. Also, below normal precipitation left some habitats in fair to poor condition in southern Ontario. However, precipitation in this region following survey completion improved habitat conditions.

Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 4.6 million. This represents a 13 percent increase from 2004. According to the teal season harvest strategy, the estimate indicates that a 9-day September teal season is appropriate in 2005.

Sandhill Cranes

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2005, uncorrected for visibility, was 412,000 cranes. The most recent photo-corrected 3-year average (for 2002–2004) was 363,167, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2004–05. About 9,300 hunters participated in these seasons, which was 12% higher than the number that participated during the previous years seasons. An estimated 15,124 cranes were harvested in the Central Flyway during 2004–05 seasons, which was 18% lower than the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 14,528 cranes for the 2004–05 period. The total North American sport harvest, including crippling losses, was estimated at 33,847, which is 5% lower than the previous year's estimate.

The fall 2004 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 18,510, which was 5.5% lower than the previous year's estimate of 19,523. Limited special seasons were held during 2004–05 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a harvest of 594 cranes (harvest allocation was 656 cranes), a 13% increase over the previous year's harvest of 528 cranes (harvest allocation was 668 cranes). The 3-year population average for 2002–04 is 18,945 sandhill cranes, which is within established population objectives of 17,000–21,000.

Woodcock

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2005 indicate that the numbers of displaying woodcock in the Eastern and Central Regions were unchanged from 2004. There was no significant trend in woodcock heard on the Singing-ground Survey in either the Eastern or Central Regions during the 10 years between 1996 and 2005. This represents the second consecutive year since 1992 that the 10-year trend estimate for either region was not a significant decline. There were long-term (1968–2005) declines of 2.0 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2004 recruitment index for the U.S. portion of the Eastern Region (2.0 immatures per adult female) was 34 percent higher than the 2003 index, and 19 percent higher than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.3 immatures per adult female) was slightly lower than the 2003 index and 17 percent below the long-term average.

Band-Tailed Pigeons and Doves

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2004, as indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. A range-wide mineral-site survey conducted in British Columbia, Washington, Oregon, and California indicated an increasing trend between 2001 and 2004. BBS analyses indicated no trend for the Interior band-tailed pigeon population over the long-term period, but did show a decline for the first time over the most recent 10 years.

Analyses of Mourning Dove Call-count Survey data over the most recent 10 years indicated no significant trend for doves heard in either the Eastern or Western Management Unit while the Central Unit showed a significant decline. Over 40 years, all 3 units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit while no trends were found in the Central and Western Units. Over 40 years, no trend was found for doves seen in the Eastern and Central Units while a significant decline was indicated for the Western Unit. A banding project is underway to obtain current information in order to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management.

In Arizona, the white-winged dove population has shown a significant decline between 1962 and 2005. However, the number of whitewings has been fairly stable since the 1970s, but did show an apparent decline over the most recent 10 years. In Texas, white-winged doves are now found throughout most of the state. In 2005, the whitewing population in Texas was estimated to be 2.8 million. The expansion of whitewings northward and eastward from Texas has led to whitewings being sighted in most of the Great Plains and Midwestern states and as far north as Ontario. Nesting has been reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Additionally, whitewings are believed to be expanding northward from Florida and have been seen along the eastern seaboard as far north as Newfoundland.

White-tipped doves are maintaining a relatively stable population in the

Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting. The count in 2005 averaged 0.51 birds per stop compared to 0.91 in 2004.

Review of Public Comments

The preliminary proposed rulemaking (April 6 **Federal Register**) opened the public comment period for migratory game bird hunting regulations and announced the proposed regulatory alternatives for the 2005–06 duck hunting season. Comments concerning early-season issues and the proposed alternatives are summarized below and numbered in the order used in the April 6 **Federal Register** document. Only the numbered items pertaining to early-seasons issues and the proposed regulatory alternatives for which written comments were received are included. Consequently, the issues do not follow in consecutive numerical or alphabetical order. We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 6, 2005, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management v. Pintails

Council Recommendations: The Pacific Flyway Council recommended that the proposed technical revisions to the Northern Pintail Harvest strategy not be adopted in 2005 and that the efforts of the Working Group formed in 2004 should be expanded and continued. The Service should commit sufficient staff time to achieve significant progress on this issue in the coming year. Future work should include as a priority the development and the inclusion of compensatory harvest mortality in the population model and stock- and sex-specific harvest regulations. Since these issues and concerns cannot be fully evaluated and considered for the 2005 regulatory cycle, the Council supports establishment of 2005 northern pintail regulations under the same criteria used in 2004.

Service Response: We concur with the Pacific Flyway Council's recommendation to delay incorporation of technical improvements to the Pintail Harvest Strategy until the next regulatory cycle. However, we believe strongly that the top priority for the coming year must be a decision on the proposed technical improvements followed by a clear articulation of the desired management objectives. We believe there are a limited number of possible objectives that might be considered: (1) Maximize long-term harvest, (2) minimize closed or partial seasons, (3) maximize long-term harvest constrained by a population goal, or (4) some combination of the above. We are open to additional input on objectives and look forward to these discussions to be facilitated by the existing working group.

In addition to a review of the proposed technical modifications and an effort to more clearly define the harvest-management objectives in the strategy, we would also suggest incorporation of an adaptive process for choosing the appropriate season for a given set of conditions and perhaps consideration of a contrasting model that would include compensatory harvest effects as a reasonable scope of work to be completed in advance of the next regulatory cycle. At this time, we do not feel investigation of stock or sex specific harvest regulations for pintails would be beneficial to pursue.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Connecticut's September goose season framework dates of 1 September to 30 September become operational.

The Central Flyway Council recommended that Oklahoma's Experimental September Canada Goose Hunting Season become operational for the time period beginning September 16–25, beginning with the September 2005 hunting season.

The Pacific Flyway Council recommended extending Idaho's geographically-limited September season framework to a State-wide framework.

Service Response: We concur with the recommendations regarding Connecticut's and Idaho's September goose seasons. We do not support the Central Flyway Council recommendation to give operational status to the experimental season in Oklahoma. The sample size of tail fans necessary to determine the portion of migrant Canada geese in the harvest is insufficient for the experimental period. We believe that the experimental season should be extended for one year and we will work with Oklahoma to complete collections required for this assessment.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese be September 16 in 2005 and future years. If this recommendation is not approved, the Committees recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16.

Service Response: We concur with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway, but do not concur with a September 16 framework opening date throughout the Flyway. A September 16 opening date Flyway-wide would require that the regular season be established during the early-season regulations process, which presents a number of administrative problems. In addition, a September 16 opening date has implications beyond the Mississippi Flyway. Regarding the recommendations for a September 16 framework opening date in Wisconsin and Michigan, we concur. However, the opening dates in both States will continue to be considered exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended using the 2005 Rocky Mountain Population sandhill crane harvest allocation of 906 birds as proposed in the allocation formula using the 2002–2004 3-year running average. In addition, the Council recommended no changes in the Mid-continent Population sandhill crane hunting frameworks.

Service Response: As we indicated in the April 6 **Federal Register**, during last year's waterfowl and sandhill crane hunting season, a group of hunters in Kansas accidentally shot at some whooping cranes. Two of the whooping cranes from this flock sustained injuries and were subsequently captured and treated by agency and university personnel. Both subsequently died after capture. We have worked with staff from the Kansas Department of Wildlife and Parks to review this incident and we concur with the Central Flyway Council recommendation for no change to the Mid-Continent Sandhill Crane Population hunting season frameworks. The State of Kansas has indicated that they will increase and improve hunter outreach and education efforts concerning whooping cranes in cooperation with the Service and will delay the opening of the sandhill crane season through State regulations. We believe these actions will minimize the potential conflicts with whooping cranes and hunting in this area.

16. Mourning Doves

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that zoning remain an option for States in their management of mourning dove harvest. The Council recommends the following elements should be noted or made part of any change in zoning policy by the Service:

1. There is no strong biological basis to establish a latitudinal line below which zoning is mandatory in the Eastern Management Unit;

2. Use of September 20th as the earliest opening date for a South Zone has no biological basis; and

3. Limiting the frequency that a State can select or change zoning options is supported, but the time period between changes should not exceed 5 years and States selecting Zoning should be able to revert back to a non-zoning option for any remaining years left before Zoning is again a regulatory option.

The Central Flyway Council recommends the following guidelines for mourning dove hunting zones and periods in the Central Management Unit (CMU).

1. The time interval between changes in zone boundaries or periods within States in the CMU should not exceed five (5) years consistent with the review schedule for duck zones and periods (i.e., 2006–2010, 2011–2015, etc).

2. States may select two (2) zones and three (3) segments except Texas has the option to select three (3) zones and two (2) segments.

3. The opening date of September 20 in the South Zone in Texas with the three (3) zone option will remain unchanged.

Service Response: We will defer the decision on dove zoning for 1 year, and will work with the Flyway Councils and Dove technical committees to develop a consensus position on dove zoning by March 2006.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommended that the boundary for the White-winged Dove Area in Texas be extended to include the area south and west of Interstate Highway 37 and U.S. Highway 90, with an aggregate daily bag limit of 12 doves, no more than 3 of which may be mourning doves. All other regulations would remain unchanged. The Council subsequently modified its recommendation to reduce the expansion to that area south and west of Interstate Highway 35 and U.S. Highway 90, with an aggregate daily bag limit of 12 doves, no more than 4 of which may be mourning doves and 2 of which may be white-tipped doves.

Service Response: We concur with the modified Council recommendation to expand the Special White-winged Dove Area to I–35 and U.S. 90 and allow an aggregate daily bag limit of 12 doves, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. However, we are concerned about the potential increased take of mourning doves and will monitor the effects of this change. Further, we appreciate Texas' willingness to work with the Service to establish those surveys or studies that are needed and feasible to determine the effects of this expanded hunting area on mourning doves. Specifically, we are hopeful that the proposed comprehensive harvest surveys along with implementation of extensive nesting and banding studies will provide data that will help make future decisions.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended that the Canvasback Harvest Strategy include a statement to the effect that "In general, Alaska may annually select a canvasback season with limits of one daily, three in possession in lieu of annual prescriptions from this strategy. In the event that the breeding population declines to a level that indicates seasons will be closed for several years, the Service will consult with the Pacific Flyway Council to decide whether Alaska seasons should be closed." The Council and Service should appreciate that if season closure decisions are made during the late season process, Alaska will have to implement regulation changes by emergency orders, which will conflict with widely distributed public regulations summaries produced in July.

Further, the Council recommended removal of the [Canada] goose closure in the Aleutian Islands (Unit 10), reduction of dark goose limits in Units 18 and 9(E) to four daily with no more than two cackling/Canada geese, and reduction in the brant season length in Unit 9(D) from 107 days to 30 days. The Council's latter two recommendations are contingent on concomitant restrictions on primary migration and wintering areas in the lower 48 states.

Service Response: We concur with the Council's recommendations. Further, we support the recommendation for the additional language to be added to the existing canvasback strategy describing the season closure process for the State of Alaska. However, we request that the Pacific Flyway Council continue to work with the Service to define what objective measures might be used to more clearly describe when canvasbacks would be closed in Alaska.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates

specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES.** In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Prior to issuance of the 2005–06 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule bas an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. Lastly, OMB has approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124

(expires 10/31/2006). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C..742 a–j.

Dated: July 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2005–06 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2005, and March 10, 2006.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine,

Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and (to be determined) in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 17). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, the Northeast Hunt Unit of North Carolina, New Jersey, and Rhode Island. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point

Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 15 consecutive days during September 16–30 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

Experimental Seasons

An experimental Canada goose season of up to 9 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 15 consecutive days during September 16–30 may be selected by Nebraska. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3 year intervals;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 22) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 24) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons:

States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits:

Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

3. In Units 9(E) and 18, the limit for dark geese is 4 daily, including no more than 2 Canada geese.

4. In Unit 9, season length for brant is 30 days.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-Winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-Winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those

portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren

County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: Beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23

to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on KS 68 to its junction with KS 33, then north on KS 33 to its junction with U.S. 56, then west on U.S. 56 to its junction with KS 31, then west-northwest on KS 31 to its junction with KS 99, then north on KS 99 to its junction with U.S. 24, then east on U.S. 24 to its junction with KS 63, then north on KS 63 to its junction with KS 16, then east on KS 16 to its junction with KS 116, then east on KS 116 to its junction with U.S. 59, then northeast on U.S. 59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS 68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with KS 96, then east on KS 96 to its junction with KS 296, then south on KS 296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S. 54, then west on U.S. 54 to its junction with 263 Street West, then south on 263 Street West to its junction with KS 49, then south on KS 49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS 55, then east on KS 55 to its junction with KS 15, then east on KS 15 to its junction with U.S. 77, then north on U.S. 77 to its junction with Ohio Street, then north on Ohio to its junction with KS 254, then east on KS 254 to its junction with KS 196, then northwest on KS 196 to its junction with I–135, then north on I–135 to its junction with U.S. 50.

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook. Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor Counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Little Snake River—That portion of the Little Snake River drainage in Carbon County.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the

Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma—That portion of the State west of I–35.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota—That portion of the State west of U.S. 281.

Montana—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11B13 and 17B26.

Gulf Coast Zone—State Game Management Units 5B7, 9, 14B16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 05–15127 Filed 7–29–05; 8:45 am]
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Federal Register

Monday,
August 1, 2005

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Meeting; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND DATE: The meeting will be held Monday, August 8, 2005, from 8:30 a.m. to 5 p.m. and Tuesday, August 9, 2005, from 9 a.m. to 3 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

PLACE: The meeting will be held both days at the NOAA Northwest Fishery Science Center, Main Auditorium, 2725 Montlake Blvd. East, Seattle, Washington.

STATUS: The meeting will be open to public participation with a 30-minute public comment period on August 8 from 4 p.m. to 4:30 p.m. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by August 2, 2005, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after August 2 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

MATTERS TO BE CONSIDERED: The meeting will include the following topics: (1) NOAA Priorities for an Ecosystem Approach to Management; (2) Approval of NOAA Cooperative Institute Reviews; (3) Safe Sanctuaries 2005: A NOAA Emergency Response Exercise and Example of Strategic Disaster Planning; (4) NOAA's Role in Open Ocean Aquaculture: Legislation and Research; (5) Update on the NOAA Annual Guidance Memo; (6) Update from SAB Climate and Ecosystem Research Working Groups; Status on NOAA's Plan to Strengthen the Tsunami Warning Program; (7) Salmon Recovery from Summit to Sea—Lessons from Puget Sound; (8) Response to 1999 SAB Recommendations on salmon recovery science; (9) NOAA Fisheries Science Centers' Salmon & General Science Needs; (10) Autonomous Underwater Vehicles(AUVs) and Remotely Operated Aircraft (ROA) Activities at NOAA.

FOR FURTHER INFORMATION CONTACT: Morgan Gopnik, Executive Director, Science Advisory Board, NOAA, Rm. 11117, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Morgan.Gopnik@noaa.gov)*; or visit the NOAA SAB Web site at *http://www.sab.noaa.gov*.

Dated: July 22, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration Atmospheric Administration.

[FR Doc. 05–15101 Filed 7–29–05; 8:45 am]

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CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 1, 2005

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- California; published 6-27-05

Pistachios grown in—
- California; published 1-5-05
  - Correction; published 1-28-05

Prunes (dried) produced in—
- California; published 5-27-05

COMMERCE DEPARTMENT

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Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Western Pacific pelagic; published 5-24-05
  - Western Pacific pelagic; correction; published 6-9-05
  - Western Pacific pelagic; correction; published 7-18-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Colorado; correction; published 7-1-05

Hazardous waste program authorizations:
- Alabama; published 6-2-05

FEDERAL TRADE COMMISSION

Fair and Accurate Credit Transactions Act; implementation:
- Pre-screen opt-out notices; published 1-31-05

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Food and Drug Administration

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- Sponsor name and address changes—
  - North American Nutrition Companies, Inc.; published 8-1-05

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- Disassembly operations; tariff treatment; published 6-30-05

HOMELAND SECURITY DEPARTMENT

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- Alabama; published 6-30-05
- Louisiana; published 7-15-05

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- Policy decision; published 8-1-05

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Privacy Act; implementation; published 7-26-05

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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- Practice before Commission; procedural rules; revisions; published 5-3-05

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- Benefits payable in terminated plans; allocation of assets, interest assumptions for valuing and paying benefits; published 7-15-05

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Alcohol; viticultural area designations:
- Alexandria Lakes, Douglas County, MN; published 7-1-05
- High Valley, Lake County, CA; published 7-1-05
- Horse Heaven Hills; Klickitat, Yakima, and Benton Counties, WA; published 7-1-05

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Fruits and vegetables; irradiation treatment; comments due by 8-9-05; published 6-10-05 [FR 05-11460]

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- National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

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National Oceanic and Atmospheric Administration

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- Threatened status determinations—
  - Elkhorn coral and staghorn coral; comments due by 8-8-05; published 5-9-05 [FR 05-09222]

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- Alaska; fisheries of Exclusive Economic Zone—
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- Northeastern United States fisheries—
  - Atlantic bluefish and summer flounder; comments due by 8-10-05; published 7-26-05 [FR 05-14725]
- West Coast States and Western Pacific fisheries—
  - Hawaii pelagic longline fisheries; seabird incidental catch reduction measures; comments due by 8-12-05; published 7-13-05 [FR 05-13691]
  - Western Pacific bottomfish; comments due by 8-12-05; published 7-13-05 [FR 05-13796]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

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- Agency information collection activities; proposals, submissions, and approvals; comments due by 8-12-05; published 6-13-05 [FR 05-11643]
- Noncommercial modifications of commercial items; submission of cost or pricing data; comments due by 8-8-05; published 6-8-05 [FR 05-11188]

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  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

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- Environmental Management Site-Specific Advisory Board—
  - Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further

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ENERGY DEPARTMENT

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201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
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1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
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17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
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Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2005

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	August 16	August 31	Sept 15	Sept 30	Oct 31
August 2	August 17	Sept 1	Sept 16	Oct 3	Oct 31
August 3	August 18	Sept 2	Sept 19	Oct 3	Nov 1
August 4	August 19	Sept 6	Sept 19	Oct 3	Nov 2
August 5	August 22	Sept 6	Sept 19	Oct 4	Nov 3
August 8	August 23	Sept 7	Sept 22	Oct 7	Nov 7
August 9	August 24	Sept 8	Sept 23	Oct 11	Nov 7
August 10	August 25	Sept 9	Sept 26	Oct 11	Nov 8
August 11	August 26	Sept 12	Sept 26	Oct 11	Nov 9
August 12	August 29	Sept 12	Sept 26	Oct 11	Nov 10
August 15	August 30	Sept 14	Sept 29	Oct 14	Nov 14
August 16	August 31	Sept 15	Sept 30	Oct 17	Nov 14
August 17	Sept 1	Sept 16	Oct 3	Oct 17	Nov 15
August 18	Sept 2	Sept 19	Oct 3	Oct 17	Nov 16
August 19	Sept 6	Sept 19	Oct 3	Oct 18	Nov 17
August 22	Sept 6	Sept 21	Oct 6	Oct 21	Nov 21
August 23	Sept 7	Sept 22	Oct 7	Oct 24	Nov 21
August 24	Sept 8	Sept 23	Oct 11	Oct 24	Nov 22
August 25	Sept 9	Sept 26	Oct 11	Oct 24	Nov 23
August 26	Sept 12	Sept 26	Oct 11	Oct 25	Nov 25
August 29	Sept 13	Sept 28	Oct 13	Oct 28	Nov 28
August 30	Sept 14	Sept 29	Oct 14	Oct 31	Nov 28
August 31	Sept 15	Sept 30	Oct 17	Oct 31	Nov 29

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