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1–4–06 Wednesday
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

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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: Wednesday, January 11, 2006
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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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22033; Directorate Identifier 2004–NM–218–AD; Amendment 39–14391; AD 2005–24–11]

RIN 2120–AA64

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

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on December 5, 2005 (70 FR 72363). The error resulted in an incorrect reference to the effective date of Brazilian airworthiness directive 2003–01–03R1. This AD applies to certain EMBRAER Model EMB–135 and Model EMB–145 series airplanes. This AD is superseding an existing AD that currently requires repetitive inspections of the spring cartridges of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, and corrective action if necessary, for certain airplanes. This AD retains the requirements of the existing AD and adds a requirement for final terminating action for all affected airplanes.

DATES: Effective January 9, 2006.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–22033; the directorate identifier for this docket is 2004–NM–218–AD.

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

SUPPLEMENTARY INFORMATION: On November 18, 2005, the FAA issued AD 2005–24–11, amendment 39–14391 (70 FR 72363, December 5, 2005), for certain EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires repetitive inspections of the spring cartridges of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, and corrective action if necessary. That AD also adds a requirement for final terminating action for all affected airplanes.

As published, AD 2005–24–11 cited Brazilian airworthiness directive 2003–01–03R1, which was issued showing an incorrect effective date of July 26, 2004. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, has corrected the effective date of Brazilian airworthiness directive 2003–01–03R1 to read August 26, 2004.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains January 9, 2006.

§ 39.13 [Corrected]

■ In the **Federal Register** of December 5, 2005, on page 72363, in the right-hand column, paragraph (1) of AD 2005–24–11 is corrected to read as follows:

* * * * *

(1) Brazilian airworthiness directive 2003–01–03R1, dated August 26, 2004, also addresses the subject of this AD.

* * * * *

Issued in Renton, Washington, on December 23, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–16 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22631; Directorate Identifier 2005–NM–183–AD; Amendment 39–14394; AD 2005–25–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on December 5, 2005 (70 FR 72366). The error resulted in an incorrect telephone number for the FAA's point of contact. This AD applies to all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This AD requires modifying electrical harnesses located at the left- and right-hand wing roots, and re-routing and modifying the harness of the right-hand outboard flap actuator.

DATES: Effective January 9, 2006.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation,

400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–22631; the directorate identifier for this docket is 2005–NM–183–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: On November 25, 2005, the FAA issued AD 2005–25–01, amendment 39–14394 (70 FR 72366, December 5, 2005), for all EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. The AD requires modifying electrical harnesses located at the left- and right-hand wing roots, and re-routing and modifying the harness of the right-hand outboard flap actuator.

As published, the AD provides an incorrect telephone number for the FAA's point of contact.

No part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains January 9, 2006.

In the **Federal Register** of December 5, 2005, on page 72366, in the third column, the **FOR FURTHER INFORMATION CONTACT** paragraph of AD 2005–25–01 is corrected to read as follows:

"**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."

EFFECTIVE DATE: The effective date of this AD remains January 9, 2006.

Issued in Renton, Washington, on December 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–17 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–51808A; File No. S7–10–04]

RIN 3235–AJ18

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** on June 29, 2005 (70 FR 37496) adopting rules under Regulation NMS, including the redesignation of the national market system rules previously adopted under section 11A of the Securities Exchange Act of 1934 ("Exchange Act"), and two amendments to the joint industry plans for disseminating market information. In that document, two paragraphs from Rule 11Aa3–2 under the Exchange Act were inadvertently omitted from their redesignation into Regulation NMS. This document corrects that omission by adding paragraphs (a)(8)(i) and (a)(8)(ii) to Rule 608 of Regulation NMS.

DATES: *Effective date:* August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel M. Gray, Market Structure Counsel, at (202) 551–5603 or David Liu, Attorney, at (202) 551–5645, Division of Market Regulation, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is making technical corrections to add paragraphs (a)(8)(i) and (a)(8)(ii) to Rule 608 of Regulation NMS.

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

■ Accordingly, 17 CFR Part 242 is corrected by making the following correcting amendment:

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 2. Amend § 242.608 by adding paragraphs (a)(8)(i) and (a)(8)(ii) to read as follows:

§ 242.608 Filing and amendment of national market system plans.

(a) * * *

(8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan Web site or on a Web site designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such Web site is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (b) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own Web site to the Web site with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (a) of this section are posted on a plan Web site or a designated Web site no later than two business days after the filing of the proposed amendments with the Commission. The plan participants shall maintain any proposed amendment to the plan on a plan Web site or a designated Web site until the Commission approves the plan amendment and the plan participants update the Web site to reflect such amendment or the plan participants withdraw the proposed amendment. If the plan participants withdraw proposed amendments, the plan participants shall remove such amendments from the plan Web site or designated Web site within two business days of withdrawal. Each plan participant shall provide a link to the Web site with the current version of the plan.

* * * * *

Dated: December 28, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 06–13 Filed 1–3–06; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 16

[OEI–2002–0009; FRL–8017–7]

RIN 2025–AA13

Implementation of Privacy Act of 1974; Revision to the Privacy Act Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is revising

its regulations implementing the Privacy Act (PA). In accordance with the principles of the National Performance Review, EPA is streamlining and condensing its regulations by removing superfluous language and using simpler language whenever possible. In addition, these regulations contain exemptions for existing systems and add new exempted system of records.

DATES: This rule is effective January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Judy E. Hutt, Privacy Act Officer, Records, FOIA and Privacy Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information (OEI), EPA, 1200 Pennsylvania Ave, NW. (2822T), Washington, DC 20460. Phone, (202) 566–1668; Fax, (202) 566–1639.

SUPPLEMENTARY INFORMATION:

I. General Information

On September 14, 2004, the EPA published a proposed rule that revised 40 CFR part 16, and added two exempted system of records notices. Interested persons were afforded an opportunity to participate in the rule making through submission of written comments on the proposed rule. The Agency received no public comments. The Agency is adding an appendix to the exempted system of records notice for the Criminal Investigative Index and Files.

A. How Can I Get Copies Of This Document and Other Related Information?

1. EPA has established an official public docket for this action under Docket ID No. OEI–2002–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

II. Description of Final Rules

EPA has revised its Privacy Act rules. All exemptions for existing systems have been revised to meet statutory requirements and several new exempt systems are added under these rules. Other revisions are generally minor and include: (1) Making the language gender neutral; (2) removing language inconsistencies; (3) a statement of EPA's right to determine the adequacy of identification; (4) allowing the Office of Inspector General to make appeal determinations related to its Privacy Act systems of records and the Office of General Counsel for all other appeals; and (5) changing the process for submitting Privacy Act requests to the Agency.

III. Statutory Authority

EPA proposed this rule under the authority of 5 U.S.C. 301, 552a (as amended), and 553.

IV. Administrative Requirements

A. Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 rule on small entities, small entity is defined as: (1) A small business as that term is defined in the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that this final rule will not have a significant economic impact on the small entities. Under the PA, no fees shall be charged for providing the first copy of a record or any portion to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 21.06. Therefore, under 5 U.S.C. 605(b), I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This final rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It pertains solely to the dissemination of information under the PA.

C. Environmental Impact

This final rule is expected to have no environmental impact. It pertains solely to the dissemination of information under the PA.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735) (October 4, 1993), EPA must determine whether this final rule 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.

The Agency has determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore not subject to OMB review.

E. Executive Orders 13132 on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255) (August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175 on Consultation With Indian Tribal Governments

Executive Order 13175, entitled, "A 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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

G. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of final rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this final rule does not include a Federal mandate as defined in UMRA. This final rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

H. Executive Order 13045

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

This final rule is not subject to Executive Order 13045 because it is neither economically significant regulatory action as defined under Executive Order 12866 nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect of children.

I. National Technology Transfer and Advancement Act of 1995

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 EPA decides not to use available and applicable voluntary consensus standards.

This final rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. Accordingly, this final rule is not subject to the requirements of the NTTAA.

J. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) (May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 4, 2006.

List of Subjects in 40 CFR Part 16

Environmental protection, Privacy.

Dated: December 21, 2005.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

■ For the reasons set out above, EPA has revised 40 CFR part 16 as follows:

PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

Sec.
16.1 Purpose and scope.
16.2 Definitions.
16.3 Procedures for accessing, correcting, or amending personal records.
16.4 Times, places, and requirements for identification of individuals making requests.
16.5 Request for correction or amendment of record.
16.6 Initial decision on request for access to, or correction or amendment of, records.
16.7 The appeal process.
16.8 Special procedures: Medical Records.
16.9 Fees.
16.10 Penalties.
16.11 General exemptions.
16.12 Specific exemptions.

Authority: 5 U.S.C. 301, 552a (as revised).

§ 16.1 Purpose and scope.

(a) This part implements the Privacy Act of 1974 (5 U.S.C. 552a) (PA or Act) by establishing Environmental Protection Agency (EPA or Agency) policies and procedures that permit individuals to obtain access to and request amendment or correction of information about themselves that is maintained in Agency systems of records. This part also establishes policies and procedures for administrative appeals of requests for access to, or correction or amendment of, records. This part does not expand or restrict any rights granted under the PA.

(b) These procedures apply only to requests by individuals seeking their own records and only to records maintained by EPA. These procedures do not apply to those systems specifically exempt under §§ 16.11 and 16.12 herein or to any government-wide systems maintained by other Federal agencies.

(c) Privacy Act requests made by individuals for records about themselves and which are processed under this Part, will also be treated as FOIA requests and processed as appropriate under 40 CFR Part 2 to ensure full disclosure.

§ 16.2 Definitions.

As used in this part:

(a) The terms *individual, maintain, record,* and *system of records* have the same meanings as specified in 5 U.S.C. 552a.

(b) *EPA* means the Environmental Protection Agency.

(c) *Working days* means calendar days excluding Saturdays, Sundays, and Federal holidays.

§ 16.3 Procedures for accessing, correcting, or amending personal records.

(a) Any individual who—

(1) Wishes to be informed whether a system of records maintained by EPA contains any record pertaining to him or her,

(2) Seeks access to an EPA record about him or her that is maintained in an EPA PA system of records, including an accounting of any disclosures of that record; or

(3) Seeks to amend or correct a record about him or her that is maintained in a system of records, may submit a written request to the EPA Privacy Act Officer, Environmental Protection Agency, Headquarters Freedom of Information Office, Office of Environmental Information (MC–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or via the Agency's Privacy Act Web site at *http://www.epa.gov/privacy* or by fax, (202) 566–1639.

(b) All requests for access to, or the correction or amendment of personal records should cite the Privacy Act of 1974 and reference the type of request being made (*i.e.*, access, correction or amendment). Requests must include:

(1) The name and signature of the individual making the request;

(2) The name of the PA system of records (as set forth in EPA's **Federal Register** PA systems of records notices) to which the request relates; and

(3) A statement whether a personal inspection of the records or a copy of them by mail is desired.

(c) A statement declaring his or her identity and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.

(d) A requester who cannot determine which PA system of records to request may ask for assistance by writing to the Headquarters Freedom of Information Office, Attention: Privacy Act Officer, Environmental Protection Agency, (MC–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or via e-mail to *http://www.epa.gov/privacy* or by fax, (202) 566–1639.

§ 16.4 Times, places, and requirements for identification of individuals making requests.

(a) If an individual requesting access under § 16.3 asks for personal inspection of records, and if EPA grants the request, the individual may appear at the time and place specified in EPA's response or arrange another time with the appropriate Agency official.

(b) Before conducting a personal inspection of his or her records, an individual must present sufficient identification (*e.g.*, driver's license, employee identification card, social security card, or credit card) to establish that he or she is the subject of the records. EPA reserves the right to determine the adequacy of the identification. An individual who is unable to provide such identification described under paragraph (b) of this section will complete and sign, in the presence of an agency official, a statement declaring his or her identity and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.

(c) An individual may have another person accompany him or her during inspection of the records, and the system manager may require the requesting individual to sign a statement authorizing disclosure of the record in the presence of that other person.

(d) An individual may request a copy of the requested record.

(e) No verification of identity will be required where the records sought have been determined to be publicly available under the Freedom of Information Act.

§ 16.5 Request for correction or amendment of record.

An individual may request correction or amendment of any record pertaining to him or her in a system of records maintained by EPA by submitting a request in writing to the Freedom of Information Office, or via the Agency's Privacy Act Web site at *http://www.epa.gov/privacy* or by fax, (202) 566–1639. The following information must be provided:

(a) The name and signature of the individual making the request;

(b) The name of the system of records;

(c) A description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and

(d) Sufficient documentation of identity as described under § 16.4(b). (An individual who is unable to provide the identification under § 16.4(b) or is submitting a request on line, must provide a statement declaring his or her identity and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses).

§ 16.6 Initial decision on request for access to, or correction or amendment of, records.

(a) Within 10 working days of receipt of a request, the Agency Privacy Act Officer will send a letter to the requester acknowledging receipt of the request and promptly forward it to the manager of the system of records where the requested record is located with instructions to:

(1) Make a determination whether to permit access to the record, or to make the requested correction or amendment;

(2) Inform the requester of that determination and, if the determination is to deny access to the record, or to not correct or amend it, the reason for that decision and the procedures for appeal.

(b) If the system manager is unable to decide whether to grant a request of access to, or amendment or correction of a record within 20 working days of the Agency's receipt of the request, he or she will inform the requester reasons for the delay, and an estimate of when a decision will be made.

(c) In reviewing a request for the correction or amendment of a record, the system manager will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(d) A system manager who decides to grant all or any portion of a request to correct or amend a record will inform any person or entity outside EPA that was provided the record of the correction or amendment, and, where there is an accounting of that disclosure, make a note of the action taken in the accounting.

(e) If a request pursuant to § 16.3 for access to a record is in a system of records which is exempted, the records system manager or designee will decide whether any information will nonetheless be made available. If the decision is to deny access, the reason for denial and the appeal procedure will be given to the requester.

(f) A person whose request for access is initially denied may appeal that denial to EPA's Privacy Act Officer. EPA's General Counsel will decide the appeal within 30 working days. If an appeal concerns a system of records maintained by the Office of Inspector General, the Privacy Act Officer will forward the appeal to the Counsel to the Inspector General who will decide on the appeal in accordance with § 16.7. The Counsel to the Inspector General will carry out all responsibilities with respect to the appeal that are otherwise assigned to EPA's General Counsel under § 16.7.

(g) If the appeal under § 16.7(e)(6) is denied, the requester will be notified of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

§ 16.7 The appeal process.

(a) An individual whose request for access to, or correction or amendment of a record is initially denied and who wishes to appeal that denial may do so by sending a letter to EPA's Privacy Act Officer within 30 days of the receipt of the initial denial. The appeal must identify and restate the initial request. If an appeal concerns an adverse decision by the Office of Inspector General, the Privacy Act Officer will forward it to the Counsel to the Inspector General, or his or her designee, who will then act on the appeal. The Counsel to the Inspector General, or his or her designee, will carry out all responsibilities with respect to PA appeals that are otherwise assigned to EPA's General Counsel under this section; however, if the Counsel to the Inspector General has signed the initial adverse determination, the General Counsel, or his or her designee, will act on the appeal.

(b) EPA's General Counsel, or his or her designee, will make final decisions on PA appeals within 30 working days from the date on which the appeal is properly received in the Office of General Counsel, unless, for good cause shown, the 30-day period is extended and the requester is notified of the extension in writing. Such extensions will be utilized only in exceptional circumstances.

(c) In conducting PA appeals, the General Counsel, or his or her designee, will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(d) If an appeal is granted in whole or in part, the requester will be notified, in writing, and access to the record will be granted, or the correction or amendment of the record will be made. In all such cases, the Privacy Act Officer will ensure that § 16.7(d) is complied with.

(e) If the General Counsel or the Counsel to the Inspector General decides not to grant all or any portion of an appeal, the requester will be informed:

(1) Of the decision and its basis;

(2) Of the requester's right to file a concise statement of reasons for disagreeing with EPA's decision;

(3) Of the procedures for filing such statement of disagreement;

(4) That such statements of disagreements will be made available in subsequent disclosures of the record, together with an agency statement (if deemed appropriate) summarizing its refusal;

(5) That prior recipients of the disputed record will be provided with statements as in paragraph (e)(4) of this section, to the extent that an accounting of disclosures is maintained under 5 U.S.C. 552a(c); and

(6) Of the requester's right to seek judicial review under 5 U.S.C. 552a(g).

§ 16.8 Special procedures: Medical Records.

Should EPA receive a request for access to medical records (including psychological records) disclosure of which the system manager decides would be harmful to the individual to whom they relate, EPA may refuse to disclose the records directly to the individual and instead offer to transmit them to a physician designated by the individual.

§ 16.9 Fees.

No fees will be charged for providing the first copy of a record or any portion of a record to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 21.07.

§ 16.10 Penalties.

The Act provides, in pertinent part: "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000." (5 U.S.C. 552a(i)(3))

§ 16.11 General exemptions.

(a) *Systems of records affected.* EPA–17 OCEFT Criminal Investigative Index and Files.

EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA–46 OCEFT/NEIC Master Tracking System.

(b) *Authority.* Under 5 U.S.C. 552a(j)(2), the head of any Federal agency may by rule exempt any PA system of records within the agency from certain provisions of the Act, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the

process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Qualification for exemption.* (1) The Agency's system of records, EPA–17 system of records is maintained by the Criminal Investigation Division, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the Division's criminal law enforcement activities comes from Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(2) The Agency's system of records, EPA–40 system of records is maintained by the Office of Investigations of the Office of Inspector General (OIG), a component of EPA that performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's Office of Investigations is the Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

(3) The Agency's system of records, EPA–46 system of records is maintained by the National Enforcement Investigations Center, Office of Criminal Enforcement, Forensics, and Training, a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities comes from Reorganization Plan No. 3 of 1970 (5 U.S.C. app. 1), effective December 2, 1970; Powers of Environmental Protection Agency, 18 U.S.C. 3063; Comprehensive Environmental Response Compensation and Liability Act , 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h–2, 300i–1; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

(d) *Scope of Exemption.* EPA systems of records 17, 40, and 46 are exempted from the following provisions of the PA: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), and (H), (5), and (8); (f)(2) through (5); and (g). To the extent that the exemption for EPA systems of records 17, 40, and 46 claimed under 5 U.S.C. 552a(j)(2) of the Act is held to be invalid, then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records from (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f)(2) through (5). For Agency's system of records, EPA system 40, an exemption is separately claimed under 5 U.S.C. 552(k)(5) from (c)(3), (d), (e)(1), (e)(4)(G), (4)(H), and (f)(2) through (5).

(e) *Reasons for exemption.* EPA systems of records 17, 40, and 46 are exempted from the above provisions of the PA for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that these systems of records are exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, the EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances, the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise on undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that these systems of records are exempted from parts of subsection (f)(2) through (5) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, the Agency has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of the individual's records in these systems of records.

(8) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines *maintain* to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material that may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(9) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(10) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(11) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since EPA is claiming that these systems of records are exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that these systems of records are exempted from those subsections of the Act.

(f) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j). If an individual requests access to such exempt records, EPA will consult with the source agency.

(g) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records that has been determined by regulation to be subject to general exemption under 5 U.S.C. 552a(j) retain their exempt status even if such records are also included in a system of records for which a general exemption has not been claimed.

§ 16.12 Specific exemptions.

(a) *Exemption under 5 U.S.C. 552a(k)(2)*—(1) *Systems of records affected.* EPA–17 OCEFT Criminal Investigative Index and Files.

EPA–21 External Compliance Program Discrimination Complaint Files.

EPA–30 OIG Hotline Allegation System.

EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA–41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

EPA–46 OCEFT/NEIC Master Tracking System.

(2) *Authority.* Under 5 U.S.C. 552a(k)(2), the head of any Federal agency may by rule exempt any PA system of records within the agency from certain provisions of the Act, if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act. However, if any individual is denied any right, privilege, or benefit that the individual would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of the material, the material must be provided, except to the extent that the disclosure would reveal the identify of a confidential source.

(3) *Qualification for exemption.* All of the affected PA systems of records contain investigatory material compiled for law enforcement purposes, material which is not within the scope of subsection (j)(2) of the Act.

(4) *Scope of exemption.* (i) EPA systems of records 17, 30, 40, 41, and 46 are exempted from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5). EPA system of records 21 is exempt from the following provisions of the PA, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) An individual is "denied any right, privilege, or benefit that he or she would otherwise be entitled by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of such material," only if EPA actually uses the material in denying or proposing to deny such right, privilege, or benefit.

(iii) EPA–17 OCEFT Criminal Investigative Index and Files, EPA–40 Inspector General's Operation and Reporting (IGOR) System Investigative Files, and EPA–46 OCEFT/NEIC Master Tracking System are exempted under 5 U.S.C. 552a(j)(2), and these systems are exempted under 5 U.S.C. 552a(k)(2) only to the extent that the (j)(2) exemption is held to be invalid.

(5) *Reasons for exemption.* EPA systems of records 17, 21, 30, 40, 41, and 46 are exempted from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his or her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these affected PA systems of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. Maintaining records in this way could impair investigations and law enforcement efforts, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. The relevance and necessity of maintaining information are often questions of judgment and timing, and it is only after that information is evaluated that its relevance and necessity can be established. In addition, during the course of an investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of an investigation, the investigator may obtain information concerning the violation of laws other than those within the scope of the agency's jurisdiction. In the interest of effective law enforcement, EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how the individual can gain access to the record, and how to contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f)(2) through (5) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under

certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(b) *Exemption under 5 U.S.C. 552a(k)(5)*—(1) *Systems of records affected.* EPA 36 Research Grant, Cooperative Agreement, and Fellowship Application Files.

EPA 40 Inspector General's Operation and Reporting (IGOR) System Investigative Files.

EPA 41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

(2) *Authority.* Under 5 U.S.C. 552a(k)(5), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the PA, if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity would be held in confidence.

(3) *Qualification for exemption.* These systems contain investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information.

(4) *Scope of exemption.* (i) EPA 36 is exempted from 5 U.S.C. 552a(c)(3) and (d). EPA 40 and 41 are exempted from the following provisions of the PA, subject to the limitations of 5 U.S.C. 552a(k)(5); 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(H); and (f)(2) through (5).

(ii) To the extent that records in EPA 40 and 41 reveal a violation or potential violation of law, then an exemption under 5 U.S.C. 552a(k)(2) is also claimed for these records. EPA 40 is also exempt under 5 U.S.C. 552a(j)(2) of the Act.

(5) *Reasons for exemption.* EPA 36, 40, and 41 are exempted from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his or her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the ability of the EPA to compile, in the future, investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the ability of the EPA to compile, in the future, investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair investigations, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4)(H) requires an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request how to gain access to any record pertaining to him or her and how to contest its content. Since EPA is claiming that these systems of records are exempt from subsections (f)(2) through (5) of the Act, concerning agency rules, and subsection (b) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f)(2) through (5) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its access and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(f)(2) through (5) require an agency to promulgate rules for obtaining access to records. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsections (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(c) *Exemption under 5 U.S.C. 552a(k)(1)*—(1) *System of records affected.* EPA 41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

(2) *Authority.* Under 5 U.S.C. 552a(k)(1), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1). A system of records is subject to the provisions of 5 U.S.C. 552(b)(1) if it contains records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(3) *Qualification for Exemption.* EPA 41 may contain some records that bear a national defense/foreign policy classification of Confidential, Secret, or Top Secret.

(4) *Scope of exemption.* To the extent that EPA 41 contains records provided by other Federal agencies that are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified by other Federal agencies pursuant to that Executive Order, the system of records is exempted from the following provisions of the PA: 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5) of the Act.

(5) *Reasons for exemption.* EPA 41 is exempted from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that this system of records is exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another Federal agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

[FR Doc. 06–45 Filed 1–3–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0015; FRL–8010–7]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on June 14, 2005 and concerns particulate matter (PM) and ammonia emissions from fluid catalytic cracking units (FCCUs) at oil refineries. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 3, 2006.

ADDRESSES: EPA has established docket number EPA-R09-OAR–2005-CA–0015 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

I. Proposed Action

On June 14, 2005 (70 FR 34435), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1105.1	Reduction of PM10 and Ammonia Emissions from Fluid Catalytic Cracking Units.	11/07/03	06/03/04

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Gregory R. McClintock, Western States Petroleum Association (WSPA); letter dated July 14, 2005 and received July 14, 2005 by electronic mail.

The comments and our responses are summarized below.

Comment #1: WSPA commented that sufficient opportunity for public comment was not provided by our June 14, 2005 proposal. WSPA requested an extension of the original 30-day public comment period and an opportunity to consult with EPA. WSPA asserted that § 6(a)(1) of Executive Order No. 12866 provides for "the involvement of * * * those expected to be burdened by any regulation" and a "meaningful opportunity to comment" of no less than 60 days.

Response #1: The application of the 60-day public comment period provision in § 6(a)(1) of Executive Order No. 12866 is not appropriate to this action because this action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. It is also not appropriate for EPA to invite consultation on a state law. The state, in this case, the SCAQMD, has the authority under California Health and Safety Code §§ 40000 and 40001 to adopt rules and regulations to achieve and maintain the federal ambient air quality standards. Furthermore, the SCAQMD satisfied the "meaningful opportunity to comment" intent of Executive Order 12866 during its rulemaking process. When the SCAQMD began developing Rule 1105.1 in January 2002, it ensured significant participation from industry through the establishment and meetings of the Refinery Working Group. The rule was ultimately made available to the public and other interested parties on September 2, 2003, more than 60 days in advance of the November 7, 2003 Board Hearing to adopt Rule 1105.1. WSPA has been actively litigating the regulation of oil refineries with the SCAQMD and should not have required more than the standard 30-day comment period EPA makes available for this type of rulemaking action to submit comments to us on this rule.

Comment #2: WSPA commented that Rule 1105.1 is currently being litigated in the Second District Court of Appeal for the State of California. WSPA anticipates that Rule 1105.1 will be vacated by the Court on the grounds that compliance with the rule is unachievable, that a more viable option for regulating this source category exists, and that the requirements of California Health and Safety Code §§ 40440(b)(1), 40405, 40406; Civil Code § 3531 have ultimately not been met. WSPA contends that EPA approval of Rule 1105.1 into the SIP at this time would interfere with the State Court of Appeal's jurisdiction and implicate the issues of federalism set forth in Executive Order No. 13132, thereby also requiring Agency submission of a federalism summary impact statement to the Director of the Office of Management and Budget (OMB).

Response #2: EPA believes that it is inappropriate to disapprove or delay approval of a SIP revision merely on the basis of pending state court challenges. To do so would allow parties to impede SIP development merely by initiating litigation. Alternatively, were EPA required to assess the validity of a litigant's state law claims in the SIP approval process, EPA would have to act like a state court, in effect weighing the competing claims of a state and a litigant. Therefore, EPA does not interpret CAA section 110(a)(2) to require the Agency to make such judgments in the SIP approval process, especially where the validity of those challenges turns upon issues of state law. Moreover, EPA believes that the structure of the CAA provides appropriate mechanisms for litigants to pursue their claims and appropriate remedies in the event that they are ultimately successful. See *Sierra Club* v. *Indiana-Kentucky Electric Corp.*, 716 F.2d 1145, 1153 (7th Cir. 1983) (State court invalidation of a SIP provision resulted in an unenforceable SIP provision which the state had to reenact or which EPA may use as the basis for a SIP call).

With regard to the possibility of a more viable option for regulating the FCCUs covered by Rule 1105.1, EPA is prohibited by CAA section 110(a)(2) from considering the economic or technological feasibility of the provisions of rules submitted for approval as a SIP revision. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 265–66 (1976). As noted by the Supreme Court, it is the province of state and local authorities to determine whether or not to impose limits that may require technology forcing measures. EPA must assess the SIP revision on the basis of the factors set forth in CAA section 110(a)(2) which do not provide for the disapproval of a rule into a SIP based upon economic or technological infeasibility.

EPA's action does not interfere with the State Court of Appeal's jurisdiction or implicate the issues of federalism set forth in Executive Order No. 13132 because, as discussed above, this action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Federalism, as defined in § 2(a) of Executive Order No. 13132, "is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people." With this action, EPA is affirming the states' "unique authorities, qualities, and abilities to meet the needs of the people" and is deferring to the state's "policymaking discretion" to adopt rules and regulations to achieve and maintain the federal ambient air quality standards. This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. See, Executive Order No. 13132 §§ 2(e) and 2(i). Agency submission of a federalism summary impact statement to the Director of OMB is, therefore, not necessary or appropriate.

Comment #3: WSPA refuted the Agency's determination that the completeness criteria in 40 CFR part 51 Appendix V have been met because § 2.1(c) of Appendix V requires that the state have "the necessary legal authority under State law to adopt and implement the plan." As discussed in Comment #2, WSPA claims the state does not have the authority to adopt and implement Rule 1105.1 because it did not satisfy the California Health and Safety Code §§ 40440(b)(1), 40405, 40406; Civil Code § 3531 requirement of achievable compliance. WSPA also contends that the state submittal of Rule 1105.1 is not complete because SCAQMD failed to meet recordkeeping requirements in § 40728 of the California Health and Safety Code and other procedural requirements of the California Environmental Quality Act (CEQA).

Response #3: As stated in Responses #1 and #2 above, the SCAQMD has authority under California Health and Safety Code §§ 40000 and 40001 to adopt rules and regulations to achieve and maintain the federal ambient air quality standards and, pursuant to Agency interpretation of CAA section 110(a)(2), EPA cannot delay the SIP development process by awaiting the Second District Court of Appeal's

judgment on this issue. With their submission of Rule 1105.1, SCAQMD and CARB attested that Rule 1105.1 meets the requirements in the California Health and Safety Code and CEQA. EPA generally defers to the state and local agencies in their interpretation of state requirements. The lower Court upheld the state and local agencies' submission of Rule 1105.1 as meeting those requirements and we see no obvious reasons to question the state and local agencies' determination that Rule 1105.1 complies with the applicable state requirements.

Comment #4: WSPA postulated that implementation of the requirements contained in Rule 1105.1 would result in more frequent maintenance and shutdowns of FCCUs. WSPA, therefore, asserted that approval of Rule 1105.1 into the SIP should be considered a "significant regulatory action" within the meaning of § 3(f)(1) of Executive Order No. 12866 and a "significant energy action" within the meaning of § 4(b)(1)(ii) of Executive Order No. 13211 because the rule would interfere with the supply of gasoline and other petroleum products, increase the cost of these products, and adversely affect competition, productivity and job availability at refineries. Furthermore, as a "significant regulatory action" and "significant energy action," EPA should submit additional information, including a "Statement of Energy Effects," and obtain approval from the Office of Information and Regulatory Affairs (OIRA) pursuant to §§ 6(a)(3)(B)–(C) and 8 of Executive Order No. 12866 and § 3 of Executive Order No. 13211.

Response #4: As discussed in Response #1, this action does not impose any additional requirements beyond those imposed by state law because it merely approves state law as meeting Federal requirements. Approval of Rule 1105.1 into the SIP does not create any added Federal requirements. Executive Order Nos. 12866 and 131211, are applicable Federal agencies, not States; therefore, the requirements to submit additional documents to and obtain approval from OIRA are not germane to this action.

Comment #5: WSPA commented that Rule 1105.1 is not enforceable as asserted in our June 14, 2005 proposed rulemaking because compliance with the requirements of Rule 1105.1 are unachievable. WSPA claimed that the proposed rule failed to address what is meant by enforceable.

Response #5: The feasibility of rules submitted for approval as a SIP revision is discussed in Response #2 and is not germane to CAA enforceability requirements. EPA maintains, as stated in our proposed rulemaking, that Rule 1105.1 is enforceable and that the criteria upon which this enforceability determination were made are clearly outlined under the section entitled "How is EPA Evaluating the Rule" at 70 FR 34436.

Comment #6: WSPA commented that the requirements of Rule 1105.1 rely on incorrect expectations regarding the availability, efficacy, and reliability of various control technologies, including dry and wet ESPs, wet gas scrubbers, sulfur oxide reducing agents, and selective catalytic and non-catalytic reduction.

Response #6: See the discussion in Response #2 regarding the economic or technological feasibility of provisions of rules submitted for approval as a SIP revision.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

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. section 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. section 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 March 6, 2006.

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, Incorporation by reference, Intergovernmental relations, Ozone, Particulate Matter, Reporting and recordkeeping requirements.

Dated: December 5, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(331) (i)(B)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(331) * * *

(i) * * *

(B) * * *

(*2*) Rule 1105.1, adopted on November 7, 2003.

* * * * *

[FR Doc. 06–56 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–CA–0016; FRL–8007–6]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision was proposed in the **Federal Register** on February 25, 2004 and concerns oxides of nitrogen (NO_X) emissions from stationary reciprocating internal combustion engines. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 3, 2006.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2005–CA–0016 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

I. Proposed Action

On February 25, 2004 (69 FR 8613), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAQMD	69.4	Stationary Reciprocating Internal Combustion Engines—Reasonably Available Control Technology.	07/30/03	11/04/03

We proposed to approve this rule because we determined that it complied with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period we did not receive any comments.

III. EPA Action

Our assessment that the submitted rule complies with the relevant CAA requirements has not changed. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the California SIP.

IV. 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. section 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. section 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 March 6, 2006. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 8, 2005.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(321)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(321) * * *

(i) * * *

(D) San Diego County Air Pollution Control District.

(*1*) Rule 69.4, adopted on September 27, 1994 and amended on July 30, 2003.

* * * * *

[FR Doc. 06–55 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3210; MB Docket No. 03–56, RM–10662, RM–10775]

Radio Broadcasting Service; George West, Three Rivers, and Victoria, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Victoria RadioWorks, Ltd., substitutes Channel 265C3 for Channel 265A at Victoria, Texas and modifies Station KEPG(FM)'s license accordingly. To accommodate the upgrade, we also delete vacant Channel 265A at George West, Texas. The construction permit for the George West allotment expired in 2000. *See* 68 FR 15142, published March 28, 2003. Channel 265C3 can be allotted to Victoria in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 7.1 kilometers (4.4 miles) southwest of the community at coordinates 28–46–40 North Latitude and 97–04–10 West Longitude. In addition, the Audio Division at the request of M.C. Vargas dismisses his counterproposal to allot Channel 265A at Three Rivers, Texas.

DATES: Effective January 30, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–56, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Therefore, for the reasons set forth in the preamble, FCC amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 265A at George West, by removing Channel 265A and by adding Channel 265C3 at Victoria.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–44 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 05–3212, MB Docket No. 01–180, RM–10200, RM–11018]

Radio Broadcasting Services; Holdenville and Pauls Valley, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a counterproposal to allot Channel 265A at Holdenville, OK, as a second local service. The document also dismisses a mutually exclusive proposal to allot Channel 266A at Pauls Valley, OK, because it was not technically correct at the time it was filed. *See* 66 F.R. 44586, August 24, 2001. *See also* **SUPPLEMENTARY INFORMATION.**

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket 01–180, adopted December 14, 2005 and released December 16, 2005.

The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The reference coordinates for Channel 265A at Holdenville are 35–04–53 NL and 96–31–00 WL.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 265A at Holdenville.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–43 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3208; MB Docket No. 03–223; RM–10813]

Radio Broadcasting Services; Greenville, LaGrange, and Waverly Hall, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a proposal filed by Cox Radio, Inc. and its wholly owned subsidiary, CXR Holdings, Inc. and Davis Broadcasting, Inc. of Columbus. See 68 FR 62554, November 5, 2003. Specifically, this document substitutes Channel 239A for Channel 239C3 at Greenville, Georgia, reallots Channel 239A to Waverly Hall, Georgia, and modifies the Station WKZJ license to specify operation on Channel 239A at Waverly Hall. To replace the loss of the sole local service at Greenville, this document reallots Channel 281C1 from LaGrange, Georgia, and modifies the license of Station WALR-FM to specify Greenville as the community of license. The reference coordinates for the Channel 239A allotment at Waverly Hall, Georgia, are 32–33–58 and 84–41–03. The reference coordinates for the Channel 281C1 allotment at Greenville, Georgia, are 33–24–24 and 84–50–03. With this action, the proceeding is terminated.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No.03–223 adopted December 14, 2005, and released December 16, 2005. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROACAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the table of FM Allotments under Georgia, is amended by removing Channel 239C3 and adding Channel 281C1 at Greenville, removing LaGrange, Channel 281C1, and by adding Waverly Hall, Channel 239A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–42 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3214; MB Docket No. 01–229, RM–10257, RM–11285, RM–11291; and MB Docket No. 01–231, RM–10259, RM–11285.]

Radio Broadcasting Services; Caseville, Harbor Beach, Lexington, and Pigeon, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Katherine Pyeatt, allots Channel 267A at Pigeon, Michigan, as the community's first local FM service. Channel 267A can be allotted to Pigeon, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.9 km (6.2 miles) east of Pigeon. The coordinates for Channel 267A at Pigeon, Michigan, are 43–51–44 North Latitude and 83–09–17 West Longitude. Concurrence in the allotment by the Government of Canada is

required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Although Canadian concurrence has been requested, notification has not yet been received. If a construction permit for Channel 267A at Pigeon, Michigan, is granted prior to receipt of formal concurrence by the Canadian government, the authorization will include the following condition: "Operation with the facilities specified herein for Pigeon, Michigan, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement, or if specifically objected to by Industry Canada." *See* **SUPPLEMENTARY INFORMATION** infra.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket Nos. 01–229 and 01–231, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

The Audio Division further, at the request of Edward Czelada, allots Channel 256A at Lexington, Michigan, as the community's second local FM service. Channel 256A can be allotted to Lexington, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 km (7.4 miles) north of Lexington. The coordinates for Channel 256A at Lexington, Michigan, are 43–22–30 North Latitude and 82–32–04 West Longitude. The Government of Canada has concurred in the allotment.

List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 256A at Lexington and by adding Pigeon, Channel 267A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–41 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3215; MB Docket No. 05–244; RM–11257]

Radio Broadcasting Services; Fruit Cove and St. Augustine, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 70 FR 48361 (August 17, 2005), this document reallots Channel 231C3 from St. Augustine, Florida to Fruit Cove, Florida, and modifies the license of Station WSOS-FM, accordingly. The coordinates for Channel 231C3 at Fruit Cove are 30–01–27 North Latitude and 81–36–19 West Longitude, with a site restriction of 10.2 kilometers (6.4 miles) south of the community.

DATES: Effective January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–244, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing St. Augustine, Channel 231C3 and by adding Fruit Cove, Channel 231C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–40 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310–5347–04, I.D. 100104H]

RIN 0648–AS78

List of Fisheries for 2005

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2005 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine

mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: This final rule is effective February 3, 2006.

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from several regional offices. See **SUPPLEMENTARY INFORMATION** for a listing of offices where these materials are available.

For collection-of-information requirements subject to the Paperwork Reduction Act, please contact Office of Management and Budget, Attn: David Rostker, fax: 202–395–7285 or *David_Rostker@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or general questions on the LOF, please contact the following NMFS staff:

Kristy Long, Office of Protected Resources, 301–713–2322;

David Gouveia, Northeast Region, 978–281–9300;

Vicki Cornish, Southeast Region, 727–824–5312;

Cathy Campbell, Southwest Region, 562–980–4060;

Brent Norberg, Northwest Region, 206–526–6733;

Chris Yates, Pacific Islands Region, 808–973–2937;

Bridget Mansfield, Alaska Region, 907–586–7642.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue S., St. Petersburg, FL 33701, Attn: Teletha Mincey;

NMFS, Southwest Region, Sustainable Fisheries Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office; or

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814, Attn: Lisa Van Atta.

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and TRP requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports and other relevant sources and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How Does NMFS Determine the Category a Fishery is Placed in?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classifications.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This final rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in

order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and
4. Southeast Regional fisheries for which a state or Federal permit is required. Southeast fisheries include all North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Puerto Rico fisheries. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Southeast Regional Office (see **ADDRESSES**).

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast and Southeast Regions, annually send renewal packets to previously registered participants in Category I or II fisheries. However, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any TRP Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable TRPs.

Sources of Information Reviewed for the Proposed 2005 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS SARs are based on the best scientific information available, including information on the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new, relevant information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that is applied to the SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The LOF for 2005 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), the final SARs for 2003 (69 FR 54262, September 8, 2004), the final SARs for 2004 (70 FR 35397, June 20, 2005), and the draft SARs for 2005 (70 FR 37091, June 28, 2005).

Comments and Responses

NMFS received 14 comment letters on the proposed 2005 LOF (69 FR 70094, December 2, 2004) and draft environmental assessment (EA) on the LOF classification process (70 FR 49902, August 25, 2005) from environmental, commercial fishing, and federal and state interests. However many comments focused on issues outside the scope of the LOF and are not responded to in this final rule. Any comments received outside the public comment periods (December 2, 2004 through March 4, 2005 and August 25, 2005 through October 24, 2005) are not responded to in this final rule.

General Comments

Comment 1: One commenter felt that NMFS does not allow the public enough time to comment on the LOF.

Response: NMFS believes that the public comment period on the 2005 LOF was more than adequate. The comment period was originally open for 30 days from December 2, 2004 to January 3, 2005, extended for an additional 60 days until March 4, 2005, and then reopened for 60 days from August 25 to October 24, 2005. Therefore, the public comment period on this action was a total of 150 days.

Comment 2: One commenter feels that the LOF category definitions are arbitrary and capricious.

Response: When Congress amended the MMPA in 1994, section 118 specified that commercial fisheries were to be classified in one of three categories, i.e., those with frequent, occasional, or, a remote likelihood of or no known incidental mortality and serious injury of marine mammals. The Secretary of Commerce, through NMFS, proposed and finalized regulations to implement the 1994 amendments (60 FR 31666, June 16, 1995; 60 FR 45086, August 30, 1995). During the development of the draft regulations to implement MMPA section 118 (before NMFS developed the proposed rule), NMFS held several working sessions and solicited written comments on aspects of section 118, such as fishery classification criteria and options for classifying fisheries. NMFS also drafted and finalized an EA to analyze the effects of the proposed regulations on the environment and the public (NMFS, 1995). In developing the process for classifying fisheries, NMFS solicited and considered public input as well as analyzed the effects of these actions on the public. Therefore, NMFS does not agree that the classification system is arbitrary or capricious.

Comment 3: One commenter believes the MMAP registration fee is too low.

Response: In MMPA section 118(c)(5)(C), it states that the Secretary is authorized to charge a fee for granting an authorization to incidentally injure or kill marine mammals, however, that fee is not to exceed the administrative costs incurred in granting the authorization. Currently, NMFS charges $25 to cover administrative costs. If NMFS has integrated the MMPA authorization with other permits or authorization processes, the fee is waived.

Comment 4: Generally, NMFS retains information on all species/stocks incidentally injured or killed on the LOF for 5 years, similar to the stock assessment process. One commenter requested that NMFS retain information on all species/stocks incidentally injured or killed on the LOF, even if the interaction occurred more than 5 years ago.

Response: The LOF is intended to inform the public of the current status of commercial fisheries with respect to marine mammal serious injuries and mortalities. It was never intended that the LOF serve as a comprehensive document detailing a particular fishery's history in terms of marine mammal interactions. When NMFS makes changes to fishery classifications, number of vessels, or species/stocks incidentally injured or killed, there is detailed information in the SARs. Therefore NMFS does not believe that this information also needs to be duplicated in the LOF.

Comment 5: One commenter recommended that NMFS reclassify all trawl fisheries as Category 1 fisheries.

Response: NMFS classifies fisheries according to the level of marine mammal serious injury and mortality incidental to commercial fisheries and by using a two-tiered, stock-specific approach. Please see **SUPPLEMENTARY INFORMATION** for the classification criteria. Only trawl fisheries that met the criteria for a Category I fishery would be included in that category.

Comment 6: One commenter recommended that NMFS include the level of observer coverage in each fishery that is proposed for reclassification in the LOF. Further, the commenter requested that NMFS include the coefficients of variation for each estimate of serious injury and mortality to illustrate how thresholds between categories are exceeded, and therefore, illustrate the basis for reclassifications.

Response: NMFS will consider this comment throughout the 2006 LOF development process.

Comment 7: NMFS received several comments on information contained in individual SARs, specifically regarding the calculated PBR levels for marine mammal stocks, which are used in developing the LOF. Some commenters identified concerns with either the 2003 SARs or the 2005 draft SARs, which were available for public comment at the same time as the 2005 proposed LOF through a separate **Federal Register** document (70 FR 37091, June 28, 2005).

Response: NMFS will address all comments regarding the development of draft SARs for 2005 as part of the comments received during the comment period on the Notice of Availability of the final SARs (closed September 26, 2005).

Comments on Fisheries in the Pacific Ocean

Comment 8: Several commenters supported the proposed reclassification of the California/Oregon drift gillnet fishery.

Response: NMFS has reclassified the California/Oregon drift gillnet fishery from Category II to Category I in this final rule.

Comment 9: Several commenters supported the proposed reclassifications of the following fisheries: AK Bering Sea/Aleutian Islands (BSAI) flatfish trawl, AK BSAI pollock trawl, AK BSAI Greenland Turbot Longline, AK BSAI Pacific cod longline, and AK Bering Sea sablefish pot.

Response: NMFS has reclassified all five fisheries from Category III to Category II in this final rule.

Comment 10: One commenter suggested that NMFS base estimated serious injury and mortality levels on an average of the full time-series of observations, instead of on the most recent 5 years of observations.

Response: There are benefits and drawbacks to using the full time-series of data in lieu of the most recent 5 years of data on marine mammal mortality and serious injury. Using a longer time series may increase the sample size (number of serious injury/mortality events) and thus improve the precision of the estimated bycatch level. However, fisheries change over time, so it may not be appropriate to average a recent estimated bycatch level with a bycatch level from 10 or more years ago. Further, the use of a 5–year running average implies that, if a level of take occurs in year 1 that results in reclassification of a commercial fishery, and that is the only take that occurs, after 6 years, that take will "drop off" the record and the fishery would be a candidate for reclassification to a lower category. In recent years, fisheries have changed classification from Category II to III when new information indicated that takes were no longer occurring. Routinely using a longer time-series of data could delay a reclassification.

In the specific case of federally-managed Alaska groundfish fisheries, NMFS has determined that the most current 5 years of data should be used to classify commercial fisheries for two reasons. First, changes in commercial fishing operations due to recent management actions resulted in the fisheries being prosecuted under very different conditions than those in the 1990s. Second, in 2004, NMFS changed the identification of Alaska commercial fisheries from gear type and area, to gear type, area, and target species. Because of how data were collected on commercial fisheries, records prior to 1998 cannot be separated in this way.

Comment 11: One commenter felt that NMFS used marine mammal bycatch data in the LOF analysis that were not characteristic of the current fisheries.

Response: NMFS agrees that marine mammal interaction data used to classify commercial fisheries should be as current as is practicable to ensure that the estimated levels of serious injury and mortality reflect current fishing practices and environmental conditions. In some cases, and particularly for some Alaska State fisheries, information on marine mammal mortality and serious injury is quite dated. Currently there are eleven

Category II state-managed fisheries in Alaska on the LOF. Since 1990, six Category II fisheries have been observed. Of those, two have been reclassified from Category II to Category III because the observer program documented a very low level of marine mammal serious injuries and mortalities that occurred incidental to those fisheries. Seven state-managed Category II fisheries have never been observed. To date, only one fishery has been observed at a time, each for a 2–year period, and often with one or more years during which observer programs were not able to be implemented. Ideally, NMFS would observe each of these fisheries every 5 years to ensure data quality and timeliness. However, without new information on previously observed fisheries, NMFS must rely on the best available information, which in some cases is dated.

Comment 12: One commenter believes it is not appropriate for NMFS to use data from observed vessels to estimate the level of marine mammal serious injury and mortality on unobserved vessels during unobserved periods.

Response: Data collected by observers are extrapolated to the fleet, unless specific information is available that provides a reliable basis for changing this strategy. The BSAI and GOA fisheries were segregated in the 2004 LOF on the basis of a separation of time, area, and target species based on some assumptions that incidental serious injury and mortality of marine mammals in these fisheries (as segregated) may vary. As a result, NMFS believes that if bycatch levels differ between these fisheries, underlying causes for those takes may be easier to discern within a fishery. This segregation also eliminates from further investigation those fisheries in which bycatch levels are of little or no concern.

Therefore, NMFS disagrees that it is inappropriate to use observer data from an observed vessel to estimate the level of marine mammal serious injury and mortality on a vessel that does not carry an observer but is fishing with the same gear, targeting the same species, and fishing in the same general environment. Observer programs are the best source of information on the level of serious injury and mortality that occurs incidental to a commercial fishery, despite the fact that an assumption must be made that the level of serious injury and mortality across the whole fleet will be similar to the level of serious injury and mortality on observed vessels within that fleet.

One advantage of delineating the Alaska groundfish fisheries into different fisheries based on gear type, area, and target species is that NMFS is even more confident that levels of marine mammal bycatch on an observed vessel can be extrapolated to the unobserved portion of the fleet. In addition, the North Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) commented that they are comfortable with extrapolating bycatch estimates from observed to unobserved portions of the fishery, as stated in the minutes of the SSC meeting on February 7–9, 2005: "The SSC is comfortable with the approach to extrapolate estimates of takes from the observed portion of a fishery to the unobserved portion of the same fishery...". Concerns raised by the SSC at the end of that sentence are addressed in the response to Comment 19.

Comment 13: When marine mammal takes occur in an area where very similar marine mammal stocks overlap in both space and time, NMFS does not assign serious injury/mortality events to a particular marine mammal stock. Instead, the LOF classification determination with respect to each marine mammal stock allows for the possibility that the mortality-serious injury event involved animals from that sub-unit. Some commenters believe NMFS is "double-counting" a single mortality-serious injury event. Commenters suggested an alternative approach such as weighting serious injury and mortality events by the probability that they involved marine mammals from a particular stock.

Response: The issue of so-called "double counting" of mortalities and incorrectly assigning a marine mammal mortality/serious injury event to a particular stock was raised by public commenters with respect to two situations: mortalities of killer whales in an area where transient and resident killer whale stocks overlap, and mortalities/serious injuries of humpback whales in Hawaii, where multiple stocks overlap on the humpback whale breeding grounds. The following rationale applies to both situations.

Assigning a commercial fishery incidental take event to a particular stock can be difficult when two marine mammal stocks that cannot be readily differentiated by observers overlap in space and time. There are three ways to assign an event to a stock when there is stock overlap: genetics, pro-rating (or "weighting") the take rate based on the abundance and distribution of each stock in that area, and independently assessing the impact of the take as if it could have resulted from either stock.

Assignment of a serious injury/mortality event to a particular stock in an area of overlap is most directly accomplished through genetics analysis of the dead marine mammal. Many genetics samples have been collected from marine mammals that have died incidental to Alaska commercial fisheries; analyses of these data can greatly assist in determining what stock(s) of marine mammals are impacted by fisheries. For some marine mammal stocks in U.S. waters, a serious injury/mortality event can be pro-rated to two different stocks if the distribution and abundance of both stocks in a particular area is well understood. However, if neither the abundance nor the distribution of both stocks in the area where the take occurred is known, pro-rating is not possible.

If NMFS cannot use pro-rating or genetics techniques to assign a particular serious injury/mortality event to a specific stock in an area of known stock overlap, then the agency assesses what LOF category would result if the take came from either stock. The impact of the single take to each possible source stock is independently reviewed for each stock by conducting separate Tier 2 analyses that compare that take to the PBR level of stock A or the PBR level of stock B. In all cases in which this situation occurred in the proposed 2005 LOF, the resulting LOF fishery categories were the same when the take was compared to either stock's PBR level. However, this may not always be the case. If the results of the Tier 2 analyses had resulted in possible classification of a fishery in one of two categories, NMFS would generally take a precautionary approach and place the fishery in the higher level category. There are no situations in which a take that might be assigned to Stock A is added to a take that might be assigned to Stock B.

Comment 14: To arrive at an assessment of incidental marine mammal mortality and serious injury, instead of double-counting takes, one commenter suggested NMFS do one of two things: (1) either reduce the mortality and serious injury by 50 percent, or (2) combine the population estimates of the affected stocks so that the actual take levels are compared to the actual total population. One commenter provided an alternative assessment of incidental marine mammal serious injury and mortality rates for combined populations of resident and transient killer whale stocks, and combined western and central humpback whale stocks.

Response: See the response to Comment 13 regarding the issue of so-

called "double counting". Stocks that are known to be genetically, demographically, and behaviorally distinct, such as resident and transient killer whale stocks, and western and central stocks of humpback whales, should not be combined for assessment of incidental mortality and serious injury. This approach is counter to the provisions of the MMPA and would greatly increase the probability that incidental mortality could have a negative impact on a stock without detection. If the source stock of an incidentally killed marine mammal is truly unknown, NMFS will continue the practice of assessing the possible impacts of that mortality on all reasonable marine mammal stocks that are known to occur in that area. NMFS will strive to reduce the number of situations where this is necessary by continuing to collect and analyze data on marine mammal abundance, distribution, and genetics of incidentally taken animals.

Comment 15: One commenter believes a measure of fishing effort is needed in order to extrapolate observed takes to total estimated takes. The commenter notes that NMFS has used fish catch, in metric tons, as a proxy for effort because NMFS claims that effort is unknown. Two commenters suggested that something other than catch (e.g., numbers of days fished, hooks used) be used to measure effort.

Response: Information on effort as measured by the number of hooks, number of hauls, days fished, etc. is available for vessels that are observed. However, there is no such measure for unobserved vessels. Because all vessels must report catch, that is the only data that can be used for all vessels, seasons, and areas to determine relative levels of effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

Comment 16: One commenter believes the NMFS' analysts who calculate the mortality and serious injury rates should re-examine assumptions made about the statistical distribution from which the sample is drawn (i.e., discrete versus continuous, symmetric versus asymmetric).

Response: Assumptions about the statistical distribution will affect the 95–percent confidence intervals around a mean, but will not affect the mean annual level of take, which is the value used to determine in which category a fishery should be placed in the LOF. NMFS has re-examined how the 95–percent confidence limits should be calculated, and has decided that using a natural log-transformation (Burnham et al., 1987), which uses the original calculated coefficients of variation is a better approach. This approach will yield positive, non-symmetric confidence limits for the bycatch estimation.

Comment 17: One commenter notes that estimates of takes are rounded to the nearest whole number of animals and suggests that NMFS state these rounding rules and adjust confidence limits.

Response: Estimates of takes in each strata are calculated by exact decimals, the decimal strata estimates are added to develop annual take estimates and 5–year averages. In future technical reports, NMFS will report estimates and confidence limits to two decimal places. Summary tables may, at times, show integers for presentation purposes. In these cases, NMFS will follow common rounding practices: if the number ends in a value less than 5, the estimate will be rounded down; if the number ends in a value greater than or equal to 5, the number will be rounded up.

Comment 18: One commenter notes that in certain cases, unobserved takes reported by the vessel crew on a monitored ship was added to an estimated take level using observed takes. The commenter believes this is problematic and alters the statistical properties of the take estimates.

Response: Takes that are not seen by the observer on an observed trip are not included in the estimates of total take. For instance, in 2001, there was one observed take of a killer whale in a monitored haul in the BSAI flatfish trawl fishery; this extrapolated to an estimate of 2 killer whales taken in that year. In 2001, an observer reported a single killer whale mortality and provided the following comment: "Skipper reported seeing a large pool of bright red blood emerge from prop. into wake following a loud noise accompanied by a shudder of the vessel. I thought it had been a raising of trawl doors, but we weren't hauling back. This pod had been feeding regularly on our discards." Although this description is conceptually identical to other situations where killer whales were killed by a propeller strike, because this interaction was not witnessed by the observer, it was not included in the estimate or used to justify a change in classification on the LOF.

Comment 19: Two commenters identified some confusion about the analytical techniques used to extrapolate from observed serious injury/mortality events to estimates of total serious injury mortality. Commenters are concerned that mortality/serious injury events that were seen, but that did not occur in monitored hauls (so-called "unobserved takes") are included in the extrapolation made to develop an estimated level of serious injury and mortality.

The commenter was also concerned that the estimated number of takes listed in the SARs cannot be directly calculated simply by using the effort information also included in the SARs.

Response: The fishing effort and marine mammal bycatch data for the groundfish fisheries of Alaska are partitioned into hundreds of strata differentiated by year, statistical fishing area (517, 610, etc.), fishing gear (trawl, longline, jig, and pot), fishery target (pollock, flatfish, sablefish, etc.), vessel type (processor, mothership, or catcher-only vessel), and four-week fishing period throughout the year (Catch Accounting System or Blend data weeks). Estimates of bycatch are calculated for each individual stratum and the decimal values of the resulting estimates/variance for all strata are then summed to yield the regional/annual estimates. The effort information included in the SARs is the pooled effort. The pooled effort shown in the SAR cannot be directly used to calculate the estimated bycatch from the observed bycatch because effort in each strata, not the pooled effort, is used to calculate an estimated bycatch rate.

If there are no observed marine mammal serious injury/mortality events in either monitored or unmonitored sets in a particular strata, NMFS assigns "zero" as the level of bycatch for that strata. In this respect, the final regional estimates are conservative. Mortalities/serious injury events actually seen by observers in designated unmonitored sets are only added to the calculated ratio estimates in two circumstances: (1) there were no observed takes in designated monitored sets (zero variance), but there were events seen and reported by either the observer, the crew, or the captain, or (2) the calculated rounded ratio estimate is lower than total number mortalities actually seen by observers in all sets on NORPAC cruises. In both cases, the added mortalities are not double counted, but known minimums are corrected. Reported takes that do not occur in monitored hauls are never used in an extrapolation to a total estimated take; in the two cases identified above, they are simply added to the calculated estimates based on monitored hauls.

Comment 20: One commenter noted that the fishery-wide estimate of total take includes both estimates from observer programs and information from logbooks. The commenter believes this

procedure double counts interactions, artificially and incorrectly exaggerating the number of takes.

Response: The MMPA requires that the SARs contain an estimate of total fishery-related mortality and serious injury. Clearly, because not all commercial fisheries are observed, this total estimate of fishery-related mortality and serious injury will combine different sources of information, such as that from observer programs, logbooks, and stranding information. However, only one source of data is used for each fishery to avoid including the same take more than once in the total estimate of take. For instance, because the BSAI pollock trawl fishery is observed, only observer data are used to estimate levels of serious injury and mortality for this fishery. If there is an existing logbook report on a particular event in this fishery, it would be ignored. In contrast, for fisheries never observed, logbook data (called "self reports" in the SARs) or stranding data are used as a minimum estimate of the level of mortality/serious injury.

NMFS disagrees that the statistical properties of combining data in this manner may be problematic. Data from logbooks or strandings are never combined with observer data. Data from logbooks or strandings are only used to determine a minimum estimate of the level of mortality/serious injury in a particular fishery when no observer data are available for that fishery. While the SARs do include a coefficient of variation for the total annual mortality level for all fisheries, these coefficients of variation reflect only the confidence in the observer data.

Comment 21: One commenter notes that the LOF does not take into account injuries or mortalities of marine mammals that occur as a result of entanglement in marine debris. In addition, the analysis does not take into account the cumulative effects of all mortality sources.

Response: This is correct. The MMPA and the implementing regulations for section 118 describe a process for classifying U.S. commercial fisheries based on the level of serious injury and mortality incidental to those fisheries relative to stock-specific PBR levels, and provide a means to manage incidental takes by commercial fisheries. Cumulative impacts of all possible sources of mortality are not specifically assessed or managed in the LOF process.

Comment 22: The commenter supports reclassification of the five Alaska fisheries.

Response: NMFS has reclassified these fisheries.

Comment 23: One commenter suggested that NMFS review the monitoring and management scheme of Alaska trawl fisheries to ensure adequate protection of humpbacks.

Response: NMFS believes that the monitoring and management of Alaska trawl fisheries is more than sufficient to ensure adequate protection of humpback whales given the high observer coverage and low level of annual serious injury and mortality of humpback whales in these fisheries.

Comment 24: One commenter noted that the timelines for publishing the SARs and the LOF do not match up, so old data are used for the classifying fisheries on the LOF because of the time it takes to incorporate new data into the SARs.

Response: The timing of the annual publication of the marine mammal SARs and the LOF are not linked. The SARs are reviewed annually for stocks listed as endangered or threatened under the ESA, and depleted under the MMPA. Stocks not listed as endangered, threatened, or depleted are updated on a 3–year cycle, or when significant new information becomes available. However, because new information on abundance, rates of population increase, or stock structure typically become available only every few years, it is reasonable to rely on abundance information and PBR levels that are a few years old.

In contrast, an analysis of the levels of serious injury and mortality of all marine mammal stocks incidental to commercial fisheries is updated every year for all stocks for the purpose of categorizing fisheries in the LOF. The most recent five years of data are used where available. However, for observer data, there is generally a 2–year time lag between when the most recent data were collected and the year for which the new LOF is proposed. For example, data from the North Pacific Groundfish Observer Program used in the analysis for the 2005 proposed List of Fisheries was collected between 1999–2003. The reason for this time lag is that the year in which the data were collected must be a completed year to assure that all data from all fisheries were available for the analysis. Thus, data collected in calendar year 2003 are analyzed in 2004. Further, the proposed LOF is generally proposed in the year prior to the year it will take effect. The 2005 proposed List of Fisheries was proposed in 2004.

The abundance, stock structure, and PBR level information in the most current published SAR is used in the analyses for each annual proposed LOF. Newer abundance information may be available between the publication of the proposed and final LOFs, but NMFS does not typically update analyses between the proposed rule and final LOFs, because this is a time consuming, annual process which will be repeated the following year. Additionally, NMFS cannot finalize any changes that have not already been proposed in the **Federal Register** and available for public comment. Availability of new information is a continuous process, and delays to in publishing the LOF would be endless if the agency updated the LOF every time new information was available. To avoid such delays the newest available information can be incorporated into the next proposed LOF the following year.

NMFS may, as it is doing for this LOF, use more current fishery-related mortality data than are included in the most recent published SAR. For this LOF, NMFS relied upon a draft report that was circulated to the public in February 2005.

Comment 25: One commenter questioned why NMFS uses a lower percentage when calculating how observed takes extrapolate to total takes if some fisheries have observer coverage levels of 100–percent. For example, the participants in the hook and line fishery for turbot are all catcher-processors and generally have 100–percent observer coverage. All vessels in this fishery over 125ft (38.1m) have 100–percent observer coverage, and vessels between 60ft (18.28m) and 125ft (38.1m)have 30–percent observer coverage; because the turbot fleet only targets turbot once per year, and an observer is required during that one trip, effectively the observer coverage is 100 percent. Further, the November 2000 Biological Opinion from the ESA section 7 consultation on the fishery shows that 100 percent of the turbot hook and line fishery is observed. Therefore, the SARs are incorrect in stating that the observer coverage for this fishery is between 27–80 percent.

Response: For the analysis of marine mammal serious injury/mortality incidental to the Alaska groundfish fisheries, observer coverage is measured as the percent of the total catch that is monitored by observers. Thus, there is a difference between the statement "100–percent of the fishery is observed" and the actual percent of the catch that is monitored by observers. Even in a fishery where every vessel carries at least one observer, there are times when observers must sleep or eat. Thus, not all catch in all hauls or sets on an observed vessel are actually monitored by an observer. The highest observer

coverage in the groundfish fisheries of Alaska, in terms of the percent of the catch that is monitored, is approximately 80–percent.

Comment 26: One commenter noted that the BSAI turbot longline fishery has historically been small and various sources of information document that participation has declined in recent years, in part due to killer whale predation on longline catch. The commenter believes the fishery should remain in Category III because the only killer whale take occurred in 1999, so using the most recent 5 years of data (2000–2004) results in a mean annual mortality rate of 0.0 killer whales per year.

Response: The observer data set analyzed for the 2005 LOF for the Federal fisheries were collected from 1999 through 2003. These data and the Tier 2 analysis indicate that the BSAI turbot fishery meets the threshold for Category II for the 2005 LOF. The 2006 LOF will analyze data collected from 2000 through 2004. The BSAI turbot fishery will be proposed to be placed in the appropriate category for the 2006 LOF according to the Tier 2 analysis using those data. The LOF is an annual process, and the category to which a fishery is assigned may vary from year to year. See the responses to Comments 15 and 24 for additional explanation on the timing of the LOF process and the data used in the analyses.

Comment 27: One commenter believes NMFS has incorrectly estimated the number of vessels participating in the turbot fishery; the number is too high.

Response: A target is calculated as the dominant retained species for a vessel by week, gear, and reporting area. In 1999, 31 catcher processors targeted Greenland turbot. Effort in the Greenland turbot fishery declined over the years to 12 catcher processors targeting Greenland turbot in 2003. Table 1. List of Fisheries Commercial Fisheries in the Pacific Ocean will be corrected in the 2006 LOF.

Comments on Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 28: Several commenters supported the proposed reclassification of the Mid-Atlantic and Northeast bottom trawl fisheries from Category III to Category II.

Response: NMFS has reclassified both the Mid-Atlantic and Northeast bottom trawl fisheries in this final rule.

Comment 29: Two commenters believe NMFS should classify the Mid-Atlantic bottom trawl fishery in Category I instead of Category II as proposed. One commenter feels NMFS should classify the fishery in Category I until the agency can determine whether short-finned or long-finned pilot whales are being seriously injured or killed incidental to this fishery. The commenter is concerned that grouping the two species together when estimating abundance and mortality may elevate risk if one species is less abundant than the other, thus disproportionately estimating serious injury and mortality.

Response: Because the two species of pilot whales that occur in the Atlantic are very similar in appearance, fishery observers and scientists cannot reliably visually identify pilot whales at the species level. Therefore, at this time, it is not possible to separately estimate total fishery-related serious injury and mortality of long-finned and short-finned pilot whales. The Atlantic Scientific Review Group advised NMFS to adopt the risk-averse strategy of assuming that either species might have been subject to the observed fishery-related serious injury and mortality. Therefore, NMFS cannot conduct a tier-analysis separately for each species because we do not have species-specific abundance estimates or PBR levels for long finned and short-finned pilot whales.

NMFS is currently analyzing biopsy samples taken during 2004 and 2005 abundance surveys to obtain more information on pilot whale stock structure and range. NMFS expects to have these estimates available in the 2007 SARs. Additionally, NMFS is working towards having observers obtain biopsy samples of animals taken incidental to commercial fishing operations.

At this time, NMFS does not have adequate information to reclassify this fishery in Category I, but will revisit the tier analysis as new information becomes available.

Comment 30: One commenter supported the proposed removal of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of species/stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Response: NMFS has removed these three stocks because NMFS has not documented any marine mammal serious injuries or deaths incidental to the Long Island Sound inshore gillnet fishery in recent years.

Comment 31: One commenter objected to the proposed name changes for the Delaware Bay inshore gillnet fishery (proposed as "Delaware River inshore gillnet fishery") and the Mid-Atlantic coastal gillnet fishery (proposed as "Mid-Atlantic gillnet fishery"). The commenter feels the fisheries as named and described do not adequately reflect gillnetting in Delaware Bay. Further, the proposed changes would put undue burden on fishermen that would now fall under the Mid-Atlantic gillnet fishery. The commenter requested that all gillnetting in Delaware Bay be included on th e LOF in Category III as the "Delaware Bay inshore gillnet fishery".

Response: NMFS would like to clarify that the proposed name changes do not change the designation of any gillnet fisheries operating in Delaware Bay. The 1994 final LOF (59 FR 43820, August 25, 1994) classified the current Category III Delaware Bay inshore gillnet fishery as those gillnet fisheries operating north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek), NJ to the southern boundary of Bombay Hook National Wildlife Refuge at Kelley Island (Port Mahon), DE. Gillnet fisheries operating south of this line have always been included under the Mid-Atlantic gillnet fishery (previously the "Mid-Atlantic coastal gillnet fishery"), a Category I fishery based on serious injuries and mortalities of harbor porpoise and bottlenose dolphins incidental to the fishery. NMFS has documented strandings of these stocks inside Delaware Bay as well as up into the Delaware River. The previous name, "Delaware Bay inshore gillnet fishery" is potentially misleading because it implies all fisheries operating throughout Delaware Bay are considered as Category III fisheries. Therefore, NMFS has changed the name of the fishery to the "Delaware River inshore gillnet fishery".

The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations apply to waters inside Delaware Bay between the COLREGS and the line defined above between Nantuxent Cove and Kelley Island. NMFS would like to clarify an error in the proposed 2005 LOF (69 FR 70100, December 2, 2004) under the heading "Delaware Bay Inshore Gillnet Fishery", that stated, "Moreover, gillnet fisheries operating inland of the COLREGS would be placed in the Delaware River inshore gillnet fishery and would not be subjected to ALWTRP regulations." The word COLREGS should be substituted with the phrase "southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE".

Comment 32: One commenter disagreed with NMFS' proposed reclassification of the Northeast bottom trawl fishery from Category III to

Category II and feels it is premature and scientifically unfounded. The commenter questioned NMFS' abundance estimates for Atlantic white-sided dolphins.

Response: To estimate Atlantic white-sided dolphin abundance, NMFS used established scientific methods that were reviewed and accepted by the Atlantic Scientific Review Group; this estimate is based on the most recent and reliable available data. At the time NMFS conducted the Tier analysis, no mortality estimate was available for the Western North Atlantic stock of white-sided dolphins taken incidental to the Northeast bottom trawl fishery. Therefore, in the Tier analysis, NMFS used observer data from 2003, during which 12 animals were observed seriously injured or killed incidental to the fishery. This count represents the number of mortalities actually recorded by fishery observers and have not been expanded to account for the portion of the fishery that was not observed. In other words, if NMFS had extrapolated the number of mortalities across the entire fishery, the number of mortalities would be higher. Because NMFS only had one year of data, the agency used this data in the Tier analysis. These 12 observed serious injuries and mortalities represent 3.3 percent of the stock's PBR level (364). Because this level of mortality and serious injury exceeds 1 percent but is less than 50 percent of the stock's PBR level, NMFS is classifying this fishery as a Category II fishery.

Comment 33: One commenter requested that NMFS not finalize the proposed inclusion of harbor porpoise on the list of species/stocks incidentally injured or killed in the Northeast bottom trawl fishery because the animal was badly decomposed and the trawl duration was five hours.

Response: NMFS agrees and has not included the Gulf of Maine/Bay of Fundy stock of harbor porpoise on the list of species and stocks injured or killed incidental to the Northeast bottom trawl fishery.

Comment 34: One commenter requested NMFS to remove the Western North Atlantic stocks of offshore bottlenose and striped dolphins from the list of species and stocks seriously injured or killed in the Northeast bottom trawl fishery, as there were no documented serious injuries or mortalities between 2000 and 2004.

Response: NMFS agrees and will propose removing these stocks in the 2006 LOF.

Comment 35: Two commenters urged NMFS to reclassify the Gulf of Mexico blue crab trap/pot fishery in Category II and the Gulf of Mexico menhaden purse seine fishery in Category I.

Response: At this time, the available information supports the current classifications for these fisheries. NMFS has no new information with which to evaluate and reclassify these fisheries. As stated in the 2004 final LOF (69 FR 48407, 48414, August 10, 2004), NMFS believes it is necessary to investigate stock structure of bottlenose dolphins in the Gulf of Mexico and intends to reevaluate these fisheries' classification as new information becomes available.

Comments on the LOF EA

Comment 36: Several commenters recommended that NMFS revise the 1995 EA, which analyzed the LOF classification process.

Response: NMFS drafted a revised EA on the process for classifying U.S. commercial fisheries according to the level of marine mammal serious injury and mortality incidental to each fishery in August 2005 and solicited public comments on the document from August 25 to October 24, 2005. This EA was finalized in December 2005.

Comment 37: Several commenters oppose the process of classifying fisheries on the LOF.

Response: NMFS is required by MMPA section 118 to classify fisheries. Please see the **SUPPLEMENTARY INFORMATION** in this final rule.

Comment 38: One commenter believes the EA is deficient because it only focuses on the thresholds for categorizing fisheries. The commenter feels the EA should consider how minimum population estimates (Nmin) and recovery factors (Rf) are defined as well as how serious injuries or mortalities are assigned to a particular marine mammal stock.

Response: Nmin and the Rf, while related to the LOF classification scheme, are not actually part of the LOF process. Nmin is defined in MMPA section 3(27) as an estimate of the number of animals in a stock that is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information and provides reasonable assurance that the stock size is equal to or greater than the estimate. Nmin is one component of the equation used to calculate PBR for a particular marine mammal stock. PBR is also defined in MMPA section 3(20). A recovery factor of between 0.1 and 1.0 is included in the PBR equation.

Pursuant to MMPA section 117, NMFS estimates PBR levels for each marine mammal stock according to the definitions in the MMPA. NMFS reports these PBR levels in individual SARs. Similar to estimating PBR, assigning serious injuries and mortalities to a particular stock also occurs during the stock assessment process. Each SAR is vetted through the appropriate SRG, who in turn reviews the reports based on their scientific expertise. Draft SARs are also available for public comment.

The process for estimating PBR (i.e., establishing Nmin and recovery factors) under MMPA section 117 is a separate process that occurs before such information is used in the process for classifying fisheries on the LOF under MMPA section 118. This is also true for assigning serious injuries and mortalities to individual stocks. Members of the public who wish to comment on elements of the stock assessment process would need to do so during the comment period on draft SARs.

Summary of Changes to the LOF for 2005

The following summarizes changes to the LOF in 2005 in fishery classification, fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery. The LOF for 2005 is identical to the LOF for 2004 with the following exceptions.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The "CA/OR Thresher Shark/Swordfish Drift Gillnet (≥14 in. Mesh) Fishery" is elevated from Category II to Category I.

The following fisheries are elevated from Category III to Category II: "AK Bering Sea, Aleutian Islands Flatfish Trawl Fishery," "AK Bering Sea, Aleutian Islands Pollock Trawl Fishery," "AK Bering Sea, Aleutian Islands Greenland Turbot Longline Fishery," "AK Bering Sea, Aleutian Islands Pacific Cod Longline Fishery," and "AK Bering Sea Sablefish Pot Fishery."

Fishery Name and Organizational Changes and Clarifications

The "Bering Sea, Aleutian Islands Cod Longline Fishery" is renamed the "Bering Sea, Aleutian Islands Pacific Cod Longline Fishery."

Number of Vessels/Persons

The estimated number of participants in the "OR Swordfish Floating Longline Fishery" is updated to 0.

The estimated number of participants in the CA/OR thresher shark/swordfish drift gillnet fishery is updated to 85.

The estimated number of participants in the CA anchovy, mackerel, tuna purse seine fishery is updated to 110.

The estimated number of participants in the California pelagic longline fishery is updated to 6.

The estimated number of participants in the California sardine purse seine fishery is updated to 110.

The estimated number of participants in the California swordfish harpoon fishery is updated to 30.

List of Species and Stocks that are Incidentally Injured or Killed

The Eastern North Pacific stock of gray whales is added to the list of marine mammal species and stocks incidentally injured or killed by the WA, OR, CA crab pot fishery.

The CA/OR/WA stocks of long-beaked and short-beaked common dolphins and the U.S. stock of California sea lions are added to the list of marine mammal species and stocks incidentally injured or killed by the CA yellowtail barracuda, white seabass, and tuna drift gillnet fishery.

The CA/OR/WA stocks of Risso's dolphin is added to the list of marine mammal species and stocks incidentally injured or killed by the California pelagic longline fishery.

The U.S. stock of California sea lions is added to the list of marine mammal species and stocks incidentally injured or killed by the California purse seine fishery.

The Eastern North Pacific resident and transient stocks of killer whales are added to the list of marine mammal species and stocks incidentally injured or killed by the AK BSAI Pacific cod longline fishery.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Classification

The "Mid-Atlantic bottom trawl fishery" (name change from "Mid-Atlantic mixed species trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

The "Northeast bottom trawl fishery," (proposed name change from "North Atlantic bottom trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) is elevated from Category III to Category II.

Addition of Fisheries to the LOF

The "Atlantic shellfish bottom trawl fishery" is added to the LOF as a Category III fishery that encompasses the calico scallops trawl fishery, crab trawl fishery, Georgia/South Carolina/Maryland whelk trawl fishery, Gulf of Maine/Mid-Atlantic sea scallops trawl fishery, and Gulf of Maine northern shrimp trawl fishery.

Removal of Fisheries from the LOF

The following trawl fisheries are removed from the 2005 LOF: "U.S. Atlantic monkfish trawl fishery," "Calico Scallops Trawl Fishery," "Crab Trawl Fishery," "Georgia/South Carolina/Maryland Whelk Trawl Fishery," "Gulf of Maine/Mid-Atlantic Sea Scallops Trawl Fishery," and "Gulf of Maine Northern Shrimp Trawl Fishery."

Fishery Name and Organizational Changes and Clarifications

The "Atlantic herring mid-water trawl fishery (including pair trawl)" is renamed the "Northeast mid-water trawl fishery."

The "Atlantic squid, mackerel, and butterfish trawl fishery" is renamed the "Mid-Atlantic mid-water trawl fishery (including pair trawl)." NMFS unintentionally omitted the parenthetical information in the proposed 2005 LOF, but did note in the explanation of the name change that the agency intended to include all components of this fishery.

The "Delaware Bay inshore gillnet fishery" is renamed the "Delaware River inshore gillnet fishery."

The "Gulf of Maine tub trawl groundfish bottom longline/hook-and-line fishery" is renamed the "Northeast/Mid-Atlantic bottom longline/hook-and-line fishery."

The "Mid-Atlantic coastal gillnet fishery" is renamed the "Mid-Atlantic gillnet fishery."

The "Mid-Atlantic mixed species trawl fishery" is renamed the "Mid-Atlantic bottom trawl fishery."

The "North Atlantic bottom trawl fishery" is renamed the "Northeast bottom trawl fishery."

Number of Vessels/Persons

The estimated number of participants in the "Atlantic shellfish bottom trawl fishery" is updated to 972.

List of Species and Stocks that are Incidentally Injured or Killed

Atlantic Mixed Species Trap/Pot Fishery

The Canadian east coast stock of minke whales and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic mixed species trap/pot fishery.

Atlantic Ocean, Caribbean, and Gulf of Mexico Large Pelagics Longline Fishery

The Western North Atlantic stock of striped dolphins, the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Western North Atlantic stock of humpback whales, and the Canadian East coast stock of minke whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

The Western North Atlantic stocks of mesoplodon beaked whales and Cuvier's beaked whales, and the Northern Gulf of Mexico stock of short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery.

Chesapeake Bay Inshore Gillnet Fishery

Gulf of Maine/Bay of Fundy stock of harbor porpoise is removed from the list of marine mammal species and stocks incidentally injured or killed by the Chesapeake Bay inshore gillnet fishery.

Delaware River Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Delaware River inshore gillnet fishery (proposed name change from Delaware Bay inshore gillnet fishery, see Fishery Name and Organizational Changes and Clarifications section).

Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir Fishery

The Western North Atlantic stocks of humpback whales and North Atlantic right whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

The Western North Atlantic stock of Atlantic white-sided dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery.

Gulf of Mexico Butterfish Trawl Fishery

The Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery.

The Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins

are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery.

Gulf of Mexico Menhaden Purse Seine Fishery

The Eastern Gulf of Mexico coastal stock of bottlenose dolphins and the Gulf of Mexico bay, sound and estuarine stock of bottlenose dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico menhaden purse seine fishery.

Long Island Sound Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery.

Mid-Atlantic Bottom Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and common dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic bottom trawl fishery.

Mid-Atlantic Gillnet Fishery

The Western North Atlantic stock of gray seals and the Western North Atlantic stock of fin whales are added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic gillnet fishery.

Mid-Atlantic Menhaden Purse Seine Fishery

The Western North Atlantic stock of humpback whales is removed from the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic purse seine fishery.

Mid-Atlantic Mid-water Trawl Fishery

The Western North Atlantic offshore stock of bottlenose dolphins is added to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic mid-water trawl fishery.

Northeast Bottom Trawl Fishery

The Western North Atlantic stock of harp seals and the Gulf of Maine/Bay of Fundy stock of harbor porpoise are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast bottom trawl fishery (proposed name change from North Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarification section).

Northeast/Mid-Atlantic Bottom Longline/Hook-and-Line Fishery

The Western North Atlantic stocks of harbor seals, gray seals, and humpback whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast/Mid-Atlantic bottom longline/hook-and-line fishery.

Northeast Mid-water Trawl Fishery

The Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and Atlantic white-sided dolphins are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast mid-water trawl fishery.

Northeast Sink Gillnet Fishery

The Western North Atlantic stocks of killer whales, spotted dolphins, and false killer whales are removed from the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

The Western North Atlantic stocks of Risso's dolphins and hooded seals are added to the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery.

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet Fishery

The Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins are removed from the list of marine mammal species and stocks incidentally injured or killed by the Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery.

Southeastern U.S. Atlantic and Gulf of Mexico Shrimp Trawl Fishery

The Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico coastal stock of bottlenose dolphins, the Gulf of Mexico bay, sound, and estuarine stock of bottlenose dolphins, and the Florida stock of the West Indian manatee are added to the list of marine mammal species and stocks incidentally injured or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery.

U.S. Atlantic Tuna Purse Seine Fishery

The Western North Atlantic stocks of long-finned and short-finned pilot whales are added to the list of marine mammal species and stocks incidentally injured or killed by the U.S. Atlantic tuna purse seine fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience serious injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of "Category II fishery" in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

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Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Common dolphin, long-beaked CA Common dolphin, short-beaked, CA/OR/WA Harbor seal, CA Harbor porpoise, Central CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, CA/OR/WA Pacific coast Long-beaked common dolphin, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern Pacific white-sided dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
LONGLINE/SET LINE FISHERIES:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Bottlenose dolphin, HI False killer whales, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA Harbor seal, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, AK Steller sea lion, Western U.S.
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)	24	California sea lion, U.S. Long-beaked common dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	120	Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	36	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
CA pelagic longline	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline	0	None documented
OR blue shark floating longline	1	None documented
POT, RING NET, AND TRAP FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific Humpback whale, Western North Pacific
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	110	California sea lion, U.S.
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	None documented
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska pollock trawl	83	None documented
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, Central North Pacific Steller sea lion, Western U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	None documented
AK Southeast Alaska crab pot	unknown	None documented
AK Southeast Alaska shrimp pot	unknown	None documented
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
HI inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Bottlenose dolphin, HI Hawaiian monk seal Rough-toothed dolphin, HI
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast bottom trawl	1,052	Bottlenose dolphin, WNA offshore Common dolphin, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Striped dolphin, WNA White-sided dolphin, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	None documented
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	None documented

List of Abbreviations Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of $25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

We received and responded to one comment on the economic analysis (Comment 27). This comment did not result in any material change to the factual basis for our certification. As a result, no regulatory flexibility analysis is required, nor was one prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

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

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

An EA was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 and 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document as required under NEPA specific to that action.

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act

(ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This final rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This final rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: December 28, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–38 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 122805B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit for two of the previously designated restricted fishing days (RFD) should be adjusted. These General category RFDs are being waived to provide reasonable opportunity for utilization of the coastwide General category BFT quota. Therefore, NMFS waives the RFDs for December 31, 2005, and January 1, 2006, and increases the daily retention limit from zero to two large medium or giant BFT on these previously designated RFDs.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the southern Atlantic season. NMFS has determined that the BFT General category daily retention limit for two of the previously designated RFDs should be adjusted as described in Table 1 to provide reasonable opportunity to utilize the coastwide General category BFT quota.

TABLE 1.—EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit category	Effective dates	Area	BFT size class limit
Atlantic tunas General and HMS Charter/Headboat (while fishing commercially).	December 31, 2005, and January 1, 2006.	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger.

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. NMFS has taken multiple actions during the 2005 fishing year in an attempt to allow for maximum utilization of the General category BFT quota. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit (on non-RFDs), in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip, effective through January 31, 2006, inclusive, provided quota remained available and the fishery remained open. On November 9, 2005 (70 FR 67929), NMFS waived the previously designated RFDs for the month of November and adjusted the daily retention limit on those RFDs to two large medium or giant BFT. On December 16, 2005 (70 FR 74712), NMFS waived previously designated RFDs for December 16–18, inclusive, and adjusted the daily retention limit on those RFDs to two large medium or giant BFT to provide reasonable opportunity to harvest the coastwide quota.

On December 7, 2005 (70 FR 72724), NMFS adjusted the General category quota by conducting a 200 mt inseason quota transfer to the Reserve category, resulting in an adjusted General category quota of 708.3 mt. This action was taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with international and domestic mandates.

Catch rates in the BFT General category fishery have generally been low and weather conditions are predicted to be favorable over the weekend. Based on a review of dealer reports, daily landing trends, available quota, weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving two RFDs established for December 31, 2005, and January 1, 2006, and increasing the General category daily BFT retention limit on those RFDs is warranted to assist the fishery in accessing the available quota. Therefore, NMFS adjusts the General category daily BFT

retention limits for December 31, 2005, and January 1, 2006, to two large medium or giant BFT per vessel.

NMFS recognizes that although catch rates have continued to be low so far this season, they may increase rapidly, and to ensure equitable fishing opportunities in all areas and provide opportunities for a late winter General category BFT fishery, NMFS needs to carefully monitor and manage this fishery. Conversely, if catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

The intent of this current adjustment is to provide reasonable opportunity to utilize landings quota of BFT while maintaining an equitable distribution of fishing opportunities to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the RFDs being waived after examining current fishing year catch and effort rates, previous fishing years' catch and effort rates, predicted weather patterns over the next week, and the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the Internet at *http://www.nmfspermits.com* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for, public comment on this action.

The regulations implementing the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. New information shows that landing rates are low and weather conditions are favorable for fishing on December 31, 2005, and January 1, 2006. Based on a review of recent information regarding the availability of BFT on the fishing grounds, dealer reports, daily landing trends, available quota, and weather conditions, NMFS has determined that this retention limit adjustment is warranted to increase access to available quota.

Delays in waiving the selected RFDs, and thereby increasing the General category daily retention limit, would be contrary to the public interest. Such delays would adversely affect those General category vessels that would otherwise have an opportunity to harvest BFT on an RFD and would further exacerbate the problem of low catch rates. Limited opportunities to access the General category quota may have negative social and economic impacts to U.S. fishermen that depend on catching the available quota. For the General category, waiving of the selected RFDs needs to be done as expeditiously as possible for the General category participants to be able to use the waived RFDs to take advantage of the adjusted retention limits and plan accordingly.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., waives a number of RFDs, thus increasing the opportunity to retain more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–24701 Filed 12–28–05; 4:17 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 71, No. 2
Wednesday, January 4, 2006

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, and 150

RIN 3150—AH41

Exemptions From Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the use of byproduct material to revise requirements for reporting transfers to persons exempt from licensing, simplify the licensing of smoke detector distribution, remove obsolete provisions, and clarify certain regulatory provisions. These actions are intended to better ensure the protection of public health and safety in the future, make the licensing of distribution to exempt persons more effective and efficient, and reduce unnecessary regulatory burden to certain general licensees. These changes would affect licensees who distribute byproduct material to exempt persons, users of some generally licensed devices, and some exempt persons.

DATES: Submit comments by March 20, 2006. Submit comments specific to the information collection aspects of this rule by February 3, 2006. Comments received after these dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: You may submit comments by any of the following methods. Please include the number RIN 3150–AH41 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher at (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You may submit comments on the information collections by the methods indicated under Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8F3. Washington, DC 20555–0001, telephone (301) 415–6264, e-mail, *crm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Commission has authority to issue both general and specific licenses for the use of byproduct material and also to exempt byproduct material from regulatory control under section 81 of the Atomic Energy Act of 1954, as amended (hereafter, "the Act"). A general license is provided by regulation, grants authority to a person for certain activities involving byproduct material, and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. Requirements for general licensees appear in the regulations and are designed to be commensurate with the specific circumstances covered by each general license.

In considering its exemptions from licensing, the Commission is directed by the Act to make "a finding that the exemption of such classes or quantities of such material or such kinds of uses

or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public." As beneficial uses of licensed material were developed and experience grew, new products intended for use by the general public were invented and the regulations were amended to accommodate the use of new products. The Commission currently has 15 exemptions from licensing for byproduct material in its regulations, most of which were added by 1970.

The Commission has conducted a systematic reevaluation of the exemptions from licensing in parts 30 and 40 of NRC's regulations (in Title 10 of the Code of Federal Regulations), which govern the use of byproduct and source materials. A major part of the effort was an assessment of the potential and likely doses to workers and the public under these exemptions. The assessment of doses associated with most of these exemptions can be found in NUREG–1717,[1] "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials," June 2001. For some exemptions, the difference between potential (possible under the conditions of the exemption) and likely doses is significant because actual use of the exemption is limited or nonexistent, or significantly lower quantities are used in products than is potentially allowed under the exemption.

This proposed action concerns only conclusions of the reevaluation of regulations governing byproduct material. Any potential revisions to the regulations governing source material would be addressed in the future. In addition to the exemptions themselves, the NRC has reviewed the existing regulations governing the distribution of byproduct material to persons for use under the exemptions.

Generally, the systematic assessment of exemptions determined that no significant problems exist with the current uses of byproduct materials under the exemptions from licensing. Actual exposures of the public likely to be occurring are in line with Commission policy concerning acceptable doses from products and materials used under exemptions from licensing. However, in some cases, the regulatory constraints and controls in place may not be adequate to fully ensure that the health and safety of the public will continue to be protected to the extent considered appropriate for practices occurring under exemptions from licensing.

Although presenting very low risks of significant individual doses to members of the general public, exempt products are a source of routine exposure to the public. A substantial portion of the population uses and enjoys benefits from exempt products, such as smoke detectors, but, at the same time, receives some radiation exposure from those products.

The Commission has also decided to make the regulations more flexible, user-friendly, and performance-based, and to improve its ability to risk-inform its regulatory program. These concepts have been considered in developing potential revisions to the regulatory program in the area of distribution of byproduct material to exempt persons.

The Commission is also proposing a revision to a certain general license within this same rulemaking. There are some areas where the regulations are not clear or explicit. This leads to inefficiencies in the regulatory process and can lower public confidence. Thus, a clarification is being proposed.

In addition to the issues addressed by this proposed rule, the Commission is considering other issues that may be addressed in a future rulemaking to further amend parts 30, 31, and 32.

B. Regulatory Framework

The Commission's regulations in part 30 contain the basic requirements for licensing of byproduct material. Part 30 includes a number of exemptions from licensing requirements in §§ 30.14, 30.15, 30.16, 30.18, 30.19, 30.20, and 30.21. These exemptions allow for certain products and materials containing byproduct material to be used without any regulatory requirements on the user. The two exemptions in §§ 30.19 and 30.20, for self-luminous products and gas and aerosol detectors, respectively, are class exemptions, which cover a broad class of products. Under these provisions, new products can be approved for use through the licensing process if the applicant demonstrates that the specific product is within the class and meets certain radiation dose criteria. This contrasts with other exemptions for which the level of safety is controlled through such limits as specification of radionuclides and quantities. Sections 30.14 and 30.18, exempt concentrations and exempt quantities, are broad materials exemptions, which allow the use of a large number of radionuclides. The specific radionuclide limits on these concentrations and quantities are contained in tables in §§ 30.70 and 30.71, respectively. The remaining exemptions from licensing are product specific, for which many assumptions can and have been made concerning how the product is distributed, used, and disposed.

Part 31 provides general licenses for the use of certain items containing byproduct material and the requirements associated with these general licenses. The general licenses are established in §§ 31.3, 31.5, 31.7, 31.8, 31.10, and 31.11.

Part 32 sets out requirements for the manufacture or initial transfer (distribution) of items containing byproduct material to persons exempt from licensing requirements and to persons using a general license.

Part 150 sets out regulations for all States that have entered into agreements with the Commission under subsection 274b of the Act (Agreement States).

II. Proposed Actions

This proposed rule would make a number of revisions to the regulations governing the use of byproduct material under exemptions from licensing and under general license and to the requirements for those who distribute products and materials for use under exemptions from licensing. The changes are intended to better ensure the protection of public health and safety in the future and improve the efficiency and effectiveness of certain licensing actions.

A. Improved Reporting of Distribution to Persons Exempt From Licensing Requirements

The current reporting and recordkeeping requirements for distributors of products and materials to persons exempt from licensing in part 30 (contained in §§ 32.12, 32.16, 32.20, 32.25(c), and 32.29(c)) require these licensees to maintain records of these transfers and to submit reports to NRC once every five years. The reports must

[1] NUREG–1717 is a historical document development using the models and methodology available in the 1990s. The NUREG provides the estimate of the radiological impacts of the various exemptions from licensing based on what was known about distribution of material under the exemptions in the early 1990s. NUREG–1717 was used as the initial basis for evaluating the regulations for exemptions from licensing requirements and determining whether those regulations adequately ensured that the health and safety of the public were protected consistent with NRC policies related to radiation protection. The agency will not use the results presented in NUREG–1717 as a sole basis for any regulatory decisions or future rulemaking without additional analysis.

Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC public Document Room, One White Flint North, 11555 Rockville Pike, Public File Area O1–F21, Rockville, MD.

indicate the total quantity of byproduct material and/or the total number of exempt units listed by type transferred during the reporting period. The breakdown of the information by year is not required. These reports are also required when filing for license renewal or notifying the Commission of a decision to cease authorized activities.

The resulting reports are not timely and informative enough for NRC to fully determine the products and amount of byproduct material distributed annually for exempt use. This limits the NRC's ability to evaluate the overall net impact of these practices on public health and safety. Because the date of reporting for each licensee is different and the information is not necessarily reported by year, it is difficult to estimate the amount or types of products/materials containing byproduct material distributed each year or to see any trends. Also, the information is not very current. The limitations of the information about the products/materials and quantities distributed for use under exemption greatly impacted the effort involved in developing the dose assessments in NUREG–1717 and contributed to the uncertainties in the results.

Before 1983, reporting of transfers of exempt byproduct material was required on an annual basis. The regulations were amended in 1983 to change the reporting requirement to once every 5 years to minimize administrative burden. However, subsequent experience with the 5-year reporting frequency has shown that it does not provide NRC with complete, accurate, or timely information on products and materials containing byproduct material distributed for use under exemptions from licensing. Reevaluation of the reporting requirements also suggests that annual reporting may be administratively more efficient for both the NRC and affected licensees than the current requirement. Experience shows that there have been more implementation problems under the current scheme than with annual reporting. For example, because of the long interval between reports, licensees frequently forget to file reports in compliance with the regulations. This lapse sometimes results in the need for requests for additional information to be sent so that an application for renewal or termination of license can be processed. The long interval between reports also leads to licensee inefficiencies in collecting the data.

The proposed rule would require that material transfer reports covering transfers made during the calendar year be submitted annually by January 31 of the following year. These reports would also be required 30 days after ceasing authorized activities, rather than at the point of notifying the Commission of the decision to cease authorized activities. The reports would no longer be required when filing for license renewal. In the first report made after the proposed change, licensees would also be required to submit information on transfers made since the previous report. Routine annual reporting should be more straightforward and easier for licensees to comply with than consolidating and reporting five years of distribution information. This approach is expected to impose a minimal burden and be more efficient for both the NRC and licensees, particularly given the current state of information technology. A recent change to the Commission's regulations allows electronic submission as an alternative to standard mail submission, which reduces administrative costs.

In addition to the lengthy period between the current reports, certain information is not always clear in the reports, making it more difficult to use the information. The proposed rule would make these reporting provisions more specific. The report would be required to include reference to the specific exemption provision under which the products/materials are being distributed and clearly identify the specific licensee submitting the report, including the license number.

The current regulations require the licensee to identify the product distributed. However, this is done in a number of ways, some of which require the NRC to refer to other documents to obtain the information needed to fully interpret what is being distributed. The proposed rule would add model numbers, when applicable, to the required information. Licensees have frequently included model numbers in the reports, but often as the only identification of the type of product being transferred. The proposed rule would eliminate these inefficiencies without making a significant change to licensees' reporting burden. The address to which reports are to be sent would also contain the line, "ATTN: Document Control Desk/Exempt Distribution," to make the internal distribution of the documents within NRC more efficient. The requirement for licensees to send an additional copy of the reports to the appropriate Regional office would be removed. Under NRC's internal procedures, the information would be electronically distributed to the Regional offices. These factors are expected to make the reporting process more efficient and to improve the quality of the information submitted.

As a result of these proposed changes, the NRC would receive information on distribution to exempt persons that is more useful for evaluating both potential individual doses to the public from multiple sources and collective doses to the public from these products and materials than that provided under the existing regulations. The NRC would have a stronger basis for informing the public concerning such exposures. These changes would also provide a better basis for considering any future regulatory changes in this area and in allocating NRC resources. Finally, the period of retention for records, proposed to remain at one year after transfers are included in a report, would be up to four years shorter than under existing requirements.

B. NRC Licensing of the Introduction of Exempt Concentrations

For most exemptions from licensing in part 30, distributors must have an NRC license even if they are in Agreement States. Reporting requirements for these licensees provide the NRC with national data on products and materials containing byproduct material distributed to persons exempt from licensing and regulation. There are two exemptions for which this is not the case. The first of these, § 30.16, "Resins containing scandium-46 and designed for sand-consolidation in oil wells," would be removed, as noted below, because it is obsolete. The second is § 30.14, "Exempt concentrations," for which those who introduce byproduct material into products or materials are licensed under § 32.11 or similar Agreement States regulations. The concentration limits applicable to this exemption from licensing are contained in § 30.70, "Schedule A—Exempt concentrations," and equivalent Agreement State regulations.

The provisions that allow Agreement State licensing of the introduction of byproduct material into products and materials in exempt concentrations for transfer to persons exempt from licensing were added to NRC regulations in 1963, soon after the regulations governing the Agreement State program were established in 1962 (10 CFR part 150). At the time, the only practices being regulated under these provisions related to quality control procedures and other radiotracer activities. Exempt concentrations were permitted to be introduced into oil, gasoline, plastics, and similar commercial and industrial items. Also, at the time these provisions were added, it was expected that the NRC would

develop a system with the Agreement States to obtain copies of the transfer reports submitted to the Agreement States by their licensees so that NRC would have national information on distribution. Such a system was never implemented.

The exempt concentration provision in § 30.14 is a general materials exemption that is not limited to a particular use. It allows for various practices to be evaluated by the NRC or an Agreement State on a case-by-case basis through the licensing process. A number of different practices have been evaluated and conducted under § 32.11, including the neutron irradiation of gemstones, silicon semiconductor materials, and luggage and cargo in an airport explosive detection system, resulting in induced radioactivity in the products. These practices involved consideration of issues not anticipated in the early 1960's, including the extensive national distribution of the products. For the case of irradiation of gemstones, the NRC has since required authorization by an NRC license.

Section 30.14 also contains an exemption from licensing by NRC (in paragraph (c)) for manufacturers, processors, or producers in Agreement States if the introduction of byproduct material into their product or material is conducted by a specific licensee whose license authorizes this introduction. Currently, this authority may be provided under either an NRC license or an Agreement State license.

Information on all distributions to exempt persons is important for NRC to effectively and efficiently assess the overall impact to the public nationally. NRC licensing of all such distribution would facilitate this process. Also, the concentration limits in § 30.70 do not provide the sole assurance of protection of public health and safety. The evaluation done in connection with the licensing process is also important. The current situation of multiple jurisdictions potentially issuing these licenses may allow for some inconsistency in the licensing process.

The proposed rule would require that the entity introducing byproduct material into products and materials for use under the exempt concentration provisions have an NRC license specifically authorizing this introduction. Specifically, the proposed rule would make §§ 32.11 and 32.12 Compatibility Category NRC (i.e., reserved to NRC). (For a brief explanation of compatibility categories see the Agreement State Compatibility section.) This change to NRC-only licensing would also require amendment of other provisions in the regulations. Thus, the proposed rule would revise the wording of the exemption in § 30.14(c), § 32.11, the prohibition in §§ 30.14(d) and 32.13, and the reciprocity provision in § 150.20 accordingly, so that only NRC may authorize the introduction of byproduct material into products and materials to be distributed for use under § 30.14 and equivalent Agreement State regulations.

Section 32.11 would be revised to exempt Agreement State licensees from § 30.33(a)(2) and (3). Consistent with the practice for other distributors of byproduct material to exempt persons in Agreement States, who have possession and use of the material authorized by an Agreement State license and distribution authorized by an NRC license, the possession and use of the byproduct material to be introduced could remain under an Agreement State license. In that case, provisions similar to § 30.33(a)(2) and (3) would apply under the Agreement State license.

Currently, the only known entities licensed under § 32.11 or equivalent regulations of the Agreement States are a small number of radiotracer firms, who introduce byproduct material into such materials as gas and oil, and steel companies, who use sources to monitor the wear of refractory lining in blast furnaces resulting in infrequent but expected instances of slight contamination of some steel. The Agreement States were requested to provide information on the number of licensees of this type in 2002 and 2005. No licensees were identified.

The exemption in § 30.14(c) was added specifically for persons in Agreement States because of the provision in § 150.15(a)(6), which reserves for NRC the authority for licensing transfers to exempt persons. The proposed rule would further revise the exemption in § 30.14(c) to also apply to manufacturers, processors, or producers in non-Agreement States who use a radiotracer firm or other § 32.11 licensee to introduce byproduct material into their products. The intent of the regulations in § 32.11 is to allow a licensee to introduce byproduct material into products and materials held by others who are not required to have a license, thus, there is no reason to limit this provision to persons in Agreement States. Therefore, § 30.14(c) would be amended to delete the reference to the Agreement States.

C. Bundling of Exempt Quantities

In accordance with § 30.18, "Exempt quantities," a person is exempt from the requirements for a license to the extent that person receives, possesses, uses, transfers, owns, or acquires byproduct material in individual quantities, each of which does not exceed the applicable quantity set forth in § 30.71, Schedule B. However, a person who commercially distributes materials to another person for use under § 30.18 must first obtain a distribution license from NRC in accordance with § 32.18, "Manufacture, distribution and transfer of exempt quantities of byproduct material: Requirements for license."

Paragraph (c) of § 32.18 prohibits the distributor from incorporating the exempt byproduct material into any manufactured or assembled commodity, product, or device intended for commercial distribution. However, there is no stated prohibition regarding such application by the end-user who is not commercially distributing the product.

NRC became aware that some persons holding byproduct material under the exemption in § 30.18 had been combining (bundling) multiple exempt quantities within an individual device that had not been evaluated and approved by the NRC. The devices were manufactured without radioactive material, but were designed to use multiple exempt quantity sources of byproduct material. After first becoming aware of the bundling issue, NRC originally determined in June 1994, that, under certain limited circumstances, bundling of exempt sources did not present a health and safety hazard and therefore no action was taken. Later, the NRC became concerned that the number of exempt sources bundled in these devices could reach a point where a general or specific license would normally be required. If the bundled sources were considered exempt, NRC would have no mechanism to ensure their safe possession, use, and disposal. As a result, NRC issued a generic letter in 1999, "NRC Generic Letter 99–01: Recent Nuclear Material Safety and Safeguards Decision on Bundling Exempt Quantities, May 3, 1999," to clarify that bundling was not appropriate under the existing regulation. This position is supported by the language in § 32.19(d)(2), which directs the distributor to provide a label or accompanying brochure with any distributed exempt quantities that includes the statement: "Exempt Quantities Should Not be Combined." However, the NRC believes that the regulations in § 30.18 should be amended to specifically prohibit bundling under the exemption. The proposed rule would revise the exempt quantities provision in § 30.18 to explicitly prohibit combining sources to create an increased radiation level.

The original basis for the quantities chosen for the exemption in § 30.18 was

the more restrictive of: (1) The quantity of material inhaled by a reference individual exposed for one year at the highest average concentration permitted in air for members of the general public in unrestricted areas at the time; or (2) for gamma emitters, the quantity of material that would produce a radiation level of 1 mR/hr at 10 cm from a point source. It was reasoned that under the conditions of the exemption, it is unlikely that any individual would inhale (or ingest) more than a very small fraction of any radioactive material being used or receive excessive doses of external radiation when realistic source-to-receptor distances and exposure times are assumed. Should bundling be permitted, NRC cannot assure that the exposures would not exceed the levels originally intended under the exemption. In addition, there would be some potential that disposal of devices containing multiple exempt sources through ordinary commercial waste streams or metal recycling channels could result in inappropriate contamination of property.

Because of the NRC's 1994 determination that, under certain limited circumstances, bundling of exempt sources did not present a health and safety hazard, the May 3, 1999, generic letter affirmed that NRC did not plan to take any action regarding the devices initially produced for use with a limited number of exempt quantity sources or their users unless a radiological safety hazard were to be identified. Because NRC has no indication that significant exposures are resulting or will result from the continued use of the devices evaluated in 1994, the proposed amendment would allow continued use of those devices. This exclusion is intended to avoid imposing a regulatory burden on those persons who otherwise might be impacted by this clarification in the regulation who are continuing to use devices in use before the generic letter was issued. Additionally, this regulation is not intended to impact normal storage methods of the materials held under the exemption in § 30.18.

D. Obsolete Provisions

Some exemptions from licensing are considered obsolete in that no products are being distributed for use under the exemption. In some cases, no products covered by the exemption remain in use. Generally, this has occurred because new technologies have made the use of radioactive material unnecessary or less cost-effective.

The Commission is proposing to delete exemptions for products that are no longer being used or manufactured, or to restrict further distribution while allowing for the continued possession and use of previously distributed items. These exemptions in part 30 are for: Automobile lock illuminators (§ 30.15(a)(2)), balances of precision (§ 30.15(a)(3)), automobile shift quadrants (§ 30.15(a)(4)), marine compasses (§ 30.15(a)(5)), thermostat dials and pointers (§ 30.15(a)(6)), spark gap irradiators (§ 30.15(a)(10)), and resins containing scandium-46 (Sc-46) for sand consolidation in oil wells (§ 30.16). Of these, only the exemption for resins containing scandium could result in significant doses, which might be of concern, if it were used.

NUREG–1717 describes the various products covered by the individual exemptions in the second subsection of each section for a particular exemption. Some of the conclusions in that report concerning distribution are:

(1) On § 30.15(a)(2): It is believed that automobile lock illuminators containing H–3 (tritium) or promethium-147 have never been manufactured for commercial use;

(2) On § 30.15(a)(3): Tritium is not currently being used on balances of precision;

(3) On § 30.15(a)(4): It is believed that automobile shift quadrants containing tritium are not being manufactured, nor have they ever been manufactured, for commercial use;

(4) On § 30.15(a)(5): Apparently, domestic manufacture and import of marine compasses and other navigational instruments that contain tritium has ceased;

(5) On § 30.15(a)(6): Tritiated paint is not currently being used on thermostat dials and pointers, primarily because electronic displays are now available for illumination purposes. Neither are gaseous tritium light sources used for thermostat dials or pointers;

(6) On § 30.15(a)(10): Spark gap irradiators containing cobalt are designed to minimize spark delay in some electrically ignited commercial fuel-oil burners by generating free electrons in the spark gap. The irradiators are no longer being manufactured, only about 100 irradiators were in stock in 1994, and no plans had been made to distribute them for use. The original manufacturer is no longer in business. The number of irradiators actually distributed is unknown, but is not thought to be significant. [Note: there are products referred to as "spark gaps" or "spark gap tubes," a category of electron tube, covered by the exemption in § 30.15(a)(8), which should not to be confused with the specific product covered by § 30.15(a)(10)]; and

(7) On § 30.16: Resins as the primary cementing media are no longer used.

With the exception of resins covered by § 30.16, only NRC licenses distributors of these products. The primary bases for determining that products are obsolete are NRC's records on its licensees. Industry contacts were also used to collect historical information concerning the use of the various products.

The NRC expects that the distribution of thermostat dials or pointers, spark gap irradiators, and resins containing Sc-46 for sand consolidation in oil wells ceased so long ago that it is highly unlikely that any remain in use. This may or may not be the case for balances of precision and marine compasses distributed for use under § 30.15(a)(3) and (5). As noted, automobile lock illuminators and automobile shift quadrants were likely never commercially distributed for use under exemption. The exemptions for automobile lock illuminators, automobile shift quadrants, thermostat dials or pointers, spark gap irradiators, and resins containing Sc-46 for sand consolidation in oil wells would be removed. The exemptions for balances of precision and marine compasses and other navigational instruments would be retained for previously distributed products only. This language is not being retained for the other five exemptions considered obsolete. However, in the unlikely event that persons still possess any of these products, this action is not intended to change the regulatory status of any products previously distributed in conformance with the provisions of the regulations applicable at the time.

Specific requirements for manufacturers and initial distributors of products that are no longer being manufactured or distributed would also be deleted. These include § 32.17 for the manufacture or distribution of resins containing Sc-46 and the prototype test procedures for automobile lock illuminators specified in § 32.40 and required by § 32.14(d)(2).

In the case of the resins containing Sc-46 for sand consolidation, this action would provide assurance that health and safety are adequately protected from possible future distribution. Only preliminary dose estimates were made for this exemption. These preliminary estimates indicated a potential for exposures higher than is appropriate for materials being used under an exemption. However, the preliminary dose estimates were not refined or included in NUREG–1717, because the exemption was no longer being used.

Deleting these unnecessary provisions would simplify the regulations by eliminating extraneous text. Also, the Commission periodically reevaluates the exposure of the general public from all products and materials distributed for use under exemption, to ensure that the total contribution of these products to the exposure of the public will not exceed small fractions of the allowable limits. Eliminating obsolete exemptions would add to the assurance that future use of products in these categories would not contribute to exposures of the public and would also eliminate the need to reassess the potential exposure of the public from possible future distributions of the products.

E. New Product-Specific Exemption for Smoke Detectors

One of the most widely distributed products used under an exemption from licensing is the ionization chamber smoke detector commonly used in residences. These smoke detectors are currently used under the class exemption in § 30.20 for gas and aerosol detectors and equivalent regulations of the Agreement States. This class exemption was established in April 1969. Section 30.20 also covers chemical agent detectors and allows for new detectors with similar purposes to be licensed for distribution without a new exemption from licensing being established by rulemaking.

The specific requirements for obtaining a license to manufacture, process, produce, or initially transfer gas and aerosol detectors intended for use under § 30.20 are currently contained in § 32.26. Conditions of licenses are contained in § 32.29 including requirements for quality control, labeling, recordkeeping, and reporting of transfers. NRC's licensing of a new initial distributor of smoke detectors involves an evaluation to determine that certain safety criteria (contained in §§ 32.27 and 32.28) are met. The safety criteria for gas and aerosol detectors include: (1) Radiation dose limits for individuals from normal handling, storage, use, and disposal of these products; and (2) radiation dose limits for individuals, in conjunction with approximate associated probabilities of occurrence, for accidents.

Residential ionization chamber smoke detectors and some similar smoke detectors have been manufactured and used for many years. Current designs are very consistent, using 0.9 to 1 μCi (33 to 37 kBq) of americium-241 (Am-241) contained in a foil, surrounded by an ionization chamber. Earlier designs used larger quantities of americium and, in some cases, other radionuclides. Residential ionization chamber smoke detectors (and similar detectors) represent a well established practice with consistency in the design of products and with extensive licensing experience. Potential doses from the distribution, use, handling, and disposal of these detectors has been estimated in NUREG/CR–1156, "Environmental Assessment of Ionization Chamber Smoke Detectors Containing Am-241," November 1979, in NUREG–1717, and in various license applications. The estimated doses under normal, routine conditions are well under the safety criterion for routine use of 5 mrem/year (5 μSv/year) whole body, and the associated individual organ limits.

This proposed rule would establish a specific exemption from licensing requirements for ionization chamber smoke detectors containing no more than 1 μCi (37 kBq) of Am-241 in the form of a foil and designed to protect life and property from fires. This is intended to apply to ionization smoke detectors whose primary function is the protection of life and property. The exemption for ionization chamber smoke detectors would be added to § 30.15(a) as § 30.15(a)(7). The primary difference between this proposed exemption and the existing class exemption in § 30.20 is that an applicant for a license to distribute smoke detectors for use under this exemption would not be required to submit dose assessments to demonstrate that doses from the various stages of the life cycle of the product do not exceed certain values. The applicant would still be required to submit basic design information consistent with that required from applicants to distribute products for use under other product-specific exemptions, specifically for those products used under § 30.15. The requirements for applicants to distribute these products are contained in § 32.14. The primary emphasis of these requirements is to provide assurance that the byproduct material is properly contained within the product and will not be released under the most severe conditions encountered in normal use and handling. Requirements for those licensed under § 32.14 are contained in §§ 32.15 and 32.16. These latter requirements address quality assurance, labeling, recordkeeping, and reports of transfer. The labeling requirement for smoke detectors under the current regulation in § 32.29(b) is more specific than those in § 32.15(d). In order that the more specific labeling requirement be retained, essentially the same details would be added to § 32.15(d) as applicable specifically to ionization chamber smoke detectors. A minor change (*i.e.*, not referring to 10 CFR 32.27) would be made to be consistent with the new regulatory requirements.

It is the NRC staff's licensing practice to issue licenses for the distribution of products to be used under a class exemption only after a Sealed Source and Device (SS & D) review and registration in the SS & D. This is not the practice for products to be distributed for use under a product-specific exemption. Because of this, the proposed revision would also reduce both application and annual fees for distributors of smoke detectors. There is a separate application fee in § 170.31, associated with device review and registration, which would no longer apply. Also, in § 171.16, there are different annual fees based on whether a device has been evaluated for registration in the SS & D. The primary difference is the elimination of the fee for holding a registration certificate. For small entities, reduced fees apply; therefore, the affect of this change on fees would be smaller.

The effect of this change would be to reduce the regulatory burden and the fees for new applicants for licenses to distribute ionization chamber smoke detectors. Additionally, the change would reduce the NRC staff time needed to review these applications, because an evaluation of dose assessments would no longer be included. Current distributors of ionization chamber smoke detectors using no more than 1 μCi of Am-241 (37 kBq) may also amend their licenses and SS & D registrations to change the regulatory status of their products in order to reduce their annual fees. Given the wide distribution this product has already experienced, this change is not expected to affect the overall number of ionization chamber smoke detectors distributed in the future. Thus, a more efficient regulatory process would be used without any impacts to the health and safety of the public or the environment.

F. Specific Licensees and Generally Licensed Devices—Clarification

Following a revision to the general license provided by § 31.5 (65 FR 79161; Dec. 18, 2000) that became effective in February 2001, an increased number of specific licensees transferred their authorization to possess and use some devices under the § 31.5 general license to the authority provided by their specific license. These transfers were made primarily to avoid the cost of the new registration fees for some of these devices in addition to their specific

license fees. There are also other, non-fee-related reasons why one would make such a transfer. There has been some confusion as to the applicability of some requirements with respect to the transfer of a device from a general licensee to a specific licensee when the same entity holds both licenses, and as to exactly what is necessary to comply with existing requirements related to both types of license.

The general license in § 31.5, under paragraph (c)(1), requires that the original label on the device be maintained. This label, among other things, indicates the general license regulatory status of the device and provides safety instructions or reference to operating and service manuals. Instructions to the general licensee may not be appropriate for the use of the device under a specific license. For example, instructions may indicate that the general licensee may not conduct its own leak tests, but must have an appropriate specifically licensed service company do so. Also, under a specific license, different labeling requirements are applicable (§ 20.1904, "Labeling containers"). It is not acceptable for a device being held under a specific license (SL) to be labeled in accordance with § 32.51(a)(3), i.e., a general license (GL) label. Thus, if a device is to be transferred from GL status to SL status, the label needs to be changed to comply with the appropriate labeling requirement.

A specific licensee would conduct its own maintenance activities including required leak tests, but may need information from the manufacturer concerning the appropriate methods for the particular device. This information may not have been provided to the entity as a general licensee, depending on the device and what has been determined to be appropriate activities for a general licensee. Thus, a specific licensee may need to contact the manufacturer to obtain the proper procedures for conducting required leak tests and other activities.

A specific licensee may have provisions in its license that authorize the quantities of the radionuclides used in a generally licensed device. The licensee needs to verify that the conditions of the specific license authorize the possession and use of the device or apply for an appropriate amendment to the license.

Paragraph (c)(8) of § 31.5 specifies acceptable specifically licensed recipients of devices covered by this general license and requires that a general licensee report to the NRC transfers of devices to specific licensees. The address for reporting includes an attention line to Document Control Desk/GLTS. GLTS refers to the General License Tracking System, which includes information on devices in use under §§ 31.5 and 31.7. In order for this database to be kept up-to-date, transfers to specific licensees must be reported and the devices removed from the database. Paragraph (c)(8)(iii) of § 31.5 requires written approval from the NRC for transfers to any specific licensee not identified in paragraph (c)(8)(i). Thus, a general licensee who wishes to transfer a device to any other specific licensee, even if that licensee is the same entity and the effect is only to transfer to a specifically licensed status, must obtain approval for the transfer. In this way, the NRC can verify that the specific license authorizes this use and can ensure that the licensee is fully aware of its responsibilities under both the general and specific license with respect to the device. In addition, the NRC can update the GLTS.

This proposed rule would explicitly set out the required actions for this type of transfer. It would also remove the necessity of obtaining prior written NRC approval under these circumstances. Paragraph 31.5(c)(8)(iii) would be revised to include details concerning the required actions for a specific licensee to transfer a device held under this general license to the authority provided by the specific license. With these additional details included in the regulation, it is not considered necessary for the specific licensee to obtain prior written approval.

III. Early Agreement State Participation

The working group involved in the preparation of this proposed rule included a member who was appointed by the Organization of Agreement States (OAS), as well as the Conference of Radiation Control Program Directors (CRCPD). This proposed rule and its draft Environmental Assessment were also provided to the Agreement States during their development via the use of the NRC Technical Conference Forum Web site and notification to the States of their availability.

Two States provided comments. Both supported most of the proposed revisions but were concerned with NRC making revisions to the general license requirements in § 31.5. The State of Wisconsin noted particularly the revision to § 31.5(c)(8) and suggested that the NRC suspend the proposed revision of § 31.5 until the Commission has evaluated a recently submitted OAS petition for rulemaking to determine if the petition offers a better alternative. Illinois supported the revision of § 31.5(c)(8), but disagreed with another amendment to § 31.5 included in the draft proposed rule posted for Agreement state comment, which has not been retained in this proposed rule. Illinois also suggested revising the labeling requirements (in § 32.19(d)(2)) so that the label would state that exempt quantities "shall" not be combined (rather than "should").

The OAS petition referred to by Wisconsin suggests that those devices used under general license and covered by the registration requirement in § 31.5(c)(13), be required to be specifically licensed instead. If the Commission decides to grant the OAS petition, unregistered devices would still remain under a general license that may be transferred to the authority of a specific license. If the Commission decides to deny the OAS petition, both registered and unregistered devices would remain under a general license that may be transferred to the authority of a specific license. As a result, the NRC has determined that the actions suggested by the OAS petition, if taken, would not negatively impact the proposed change in this action; the issues are sufficiently independent that the NRC does not believe this change should await resolution of the petition.

The labeling requirement in § 32.19(d) is a notification from a licensee to a non-licensee. The label provides information to the user; however, this direction is not enforceable. A revision to the exemption in § 30.18 itself is being proposed in order to make the intent demonstrated by the labeling requirement more enforceable. Amending the labeling requirement would not do so and would impose a cost on licensees who commercially distribute exempt quantities with no real effect.

IV. Summary of Proposed Amendments by Section

10 CFR 30.14(c)—Would revise the exemption for manufacturers, processors, and producers to require that the licensed entity must be an NRC licensee, and clarify that the exemption applies in all jurisdictions.

10 CFR 30.14(d)—Would revise the prohibition on introducing exempt concentrations to apply to all persons except those authorized by an NRC license.

10 CFR 30.15(a)—Would (1) remove exemptions for automobile lock illuminators, automobile shift quadrants, thermostat dials and pointers, and spark gap irradiators; (2) limit the exemptions for balances of precision and marine compasses and other navigational instruments to products previously distributed; and (3)

add an exemption for ionization chamber smoke detectors containing no more than 1 μCi of Am-241 in a foil.

10 CFR 30.16—The exemption for resins containing Sc-46 for sand consolidation in oil wells would be removed.

10 CFR 30.18—Would revise the exempt quantities provision by adding an explicit prohibition in a new paragraph (e) against combining sources to create an increased radiation level.

10 CFR 31.5(c)(8)(ii)—Would resolve a minor ambiguity with respect to addressing reports.

10 CFR 31.5(c)(8)(iii)—Would revise transfer provisions to explicitly state actions necessary for transfer of devices from general license to specific license status and remove the need for written NRC approval in that case.

10 CFR 32.11(a)—Would be revised to exempt Agreement State licensees from § 30.33(a)(2) and (3).

10 CFR 32.12—Would revise the period of reporting for material transfers to annual and make minor changes to the content of reports.

10 CFR 32.13—Would revise the prohibition on introducing exempt concentrations to apply to all persons except those authorized by an NRC license.

10 CFR 32.14(d)—Would remove the reference to § 32.40.

10 CFR 32.15(d)—Would add specific labeling requirements for smoke detectors distributed for use under § 30.15 consistent with that currently applicable under the gas and aerosol detector provisions in § 32.29.

10 CFR 32.16—Would revise the period of reporting for material transfers to annual, make minor changes to the content of reports, and remove reference to § 32.17.

10 CFR 32.17—Requirements for distribution of resins containing Sc-46 for sand consolidation in oil wells would be removed.

10 CFR 32.20—Would revise the period of reporting for material transfers to annual and make minor changes to the content of reports.

10 CFR 32.25(c)—Would revise the period of reporting for material transfers to annual and make minor changes to the content of reports.

10 CFR 32.29(c)—Would revise the period of reporting for material transfers to annual and make minor changes to the content of reports.

10 CFR 32.40—Prototype test requirements for automobile lock illuminators would be removed.

10 CFR 150.20(b)—Would remove provision for transfers to persons exempt under § 30.14 from the reciprocity provision for Agreement State licensees.

V. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 30, 31, 32, and 150 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility categories A, B, C, D, NRC or adequacy category H&S. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of Title 10 of the Code of Federal Regulations. These program elements should not be adopted by the Agreement States. Health and Safety (H&S) are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program.

The proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The revisions to parts 30 and 31 would be classified as Compatibility Category B and the revisions to §§ 32.13 and 150.20 would be classified as Category C. Sections 32.11 and 32.12 would be changed from Compatibility Categories C/B and C respectively to Category NRC. Section 32.17 is Compatibility Category B. Sections 32.15, 32.16, 32.20, 32.25, and 32.29 are classified as Compatibility Category NRC. The existing compatibility designation for these regulations are not affected.

Specific information about the compatibility or health and safety components assigned to this rule may be found at the Office of State and Tribal Programs Web site, *http://www.hsrd.ornl.gov/nrc/home.html.*

VII. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading above.

VIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would amend its regulations governing the use of byproduct material to revise reporting of transfers to persons exempt from licensing, simplify the licensing of smoke detector distribution, remove obsolete provisions, and make some clarifications to the regulations. None of these actions constitute the establishment of a standard that establishes generally applicable requirements.

IX. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the

Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. The following is a summary of the Environmental Assessment: Many of the individual actions being proposed are the type of actions described in the categorical exclusions of § 51.22(c)(1) and (3). In addition, the proposed rule would remove provisions applicable to practices that no longer exist, establish a separate exemption from licensing for ionization smoke detectors containing no more than 1 μCi of americium-241, explicitly prohibit combining exempt quantity sources, and require NRC licensing of the introduction of exempt concentrations into products and materials. The removal of unused provisions would not result in a change to any practices except to ensure that these activities do not resume in the future without reconsideration by the Commission. The new exemption for smoke detectors is not expected to have any impact on the design or number of smoke detectors distributed to the public. The prohibition on combining exempt quantities reinforces the intent of existing regulations. The safety standards related to the exempt concentration provisions would not change. The Commission has concluded that none of these actions would have any significant impacts to the environment or otherwise include any condition requiring consultation under section 102(2)(C) of NEPA.

The determination of the Environmental Assessment for this proposed rule is that there will be no significant impact to the public or the environment from this action. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The Environmental Assessment may be examined at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment are available from Andy Imboden of the Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6128, e-mail, *asi@nrc.gov*.

X. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed rule makes minor revisions to the burdens on licensees for reporting and recordkeeping under §§ 31.5, 32.12, 32.16, 32.20, 32.25(c), and 32.29(c). It reduces the burden for new applicants to distribute ionization chamber smoke detectors by allowing them to obtain licenses under § 32.14 rather than § 32.26. The public burden for this information collection is estimated to average 1 hour. Because the burden for these revisions to the information collections is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0001, 3150–0014, 3150–0016, and 3150–0120.

Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *bjs1@nrc.gov*.

XI. 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.

XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The regulatory analysis can also be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*. Single copies of the regulatory analysis are available from Catherine R. Mattsen, telephone (301) 415–6264, e-mail, *crm@nrc.gov* of the Office of Nuclear Material Safety and Safeguards.

XIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A significant number of the licensees affected by this action would meet the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. However, none of the proposed revisions to the regulatory program would result in a significant economic impact on the affected entities.

XIV. Backfit Analysis

NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because it does not involve any provisions that would impose backfits as defined in Chapter I.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 31, 32, and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.14, paragraphs (c) and (d) are revised to read as follows:

§ 30.14 Exempt concentrations

* * * * *

(c) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in this part and parts 31 through 36 and 39 of this chapter to the extent that this person transfers byproduct material contained in a product or material in concentrations not in excess of those specified in § 30.70 and introduced into the product or material by a licensee holding a specific license issued by the Commission expressly authorizing such introduction. This exemption does not apply to the transfer of byproduct material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(d) No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under this section or equivalent regulations of an Agreement State, except in accordance with a license issued under § 32.11 of this chapter.

3. In § 30.15, paragraphs (a)(2), (a)(4), (a)(6), and (a)(10) are removed and reserved, paragraphs (a)(3) and (a)(5) are revised, and paragraph (a)(7) is added to read as follows:

§ 30.15 Certain items containing byproduct material.

(a) * * *

(2) [Reserved]

(3) Balances of precision containing not more than 1 millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part manufactured before (insert effective date of rule).

(4) [Reserved]

(5) Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before (insert effective date of rule).

(6) [Reserved]

(7) Ionization chamber smoke detectors containing not more than 1 microcurie (μCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

* * * * *

(10) [Reserved]

* * * * *

§ 30.16 [Removed]

4. Section 30.16 is removed.

5. In § 30.18, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 30.18 Exempt quantities.

(a) Except as provided in paragraphs (c) through (e) of this section, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 30 through 34, 36, and 39 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in individual quantities, each of which does not exceed the applicable quantity set forth in § 30.71, Schedule B.

* * * * *

(e) No person may, for purposes of producing an increased radiation level, combine quantities of byproduct material covered by this exemption so that the aggregate quantity exceeds the limits set forth in § 30.71, Schedule B, except for byproduct material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the regulations in this part.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

6. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

7. In § 31.5, paragraphs (c)(8)(ii) and (c)(8)(iii) are revised to read as follows:

§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

* * * * *

(c) * * *

(8) * * *

(ii) Shall, within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/GLTS. The report must contain—

(A) The identification of the device by manufacturer's (or initial transferor's) name, model number, and serial number;

(B) The name, address, and license number of the person receiving the device (license number not applicable if exported); and

(C) The date of the transfer.

(iii) Shall obtain written NRC approval before transferring the device to any other specific licensee not specifically identified in paragraph (c)(8)(i) of this section: however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if, the holder:

(A) Verifies that the specific license authorizes the possession and use, or applies and obtains an amendment to the license authorizing the possession and use;

(B) Removes the label otherwise required by paragraph (c)(1) of this section and replaces it with an appropriate label to comply with § 20.1904 of this chapter;

(C) Obtains information from the manufacturer (or initial transferor) concerning maintenance such as leak testing that would be applicable under the specific license; and

(D) Reports the transfer under paragraph (c)(8)(ii) of this section.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

8. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

9. In § 32.11, paragraph (a) is revised to read as follows:

§ 32.11 Introduction of byproduct material in exempt concentrations into products or materials, and transfer of ownership or possession: Requirements for license.

* * * * *

(a) Satisfies the general requirements specified in § 30.33 of this chapter; provided, however, that the requirements of § 30.33(a)(2) and (3) do not apply to an application for a license to introduce byproduct material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the byproduct material, if the possession and use of the byproduct material to be introduced is authorized by a license issued by an Agreement State;

* * * * *

10. Section 32.12 is revised to read as follows:

§ 32.12 Same: Records and material transfer reports.

(a) Each person licensed under § 32.11 shall maintain records of transfer of byproduct material and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the byproduct material is transferred for use under § 30.14 of this chapter or equivalent regulations of an Agreement State.

(b) The report must identify the:

(1) Type and quantity of each product or material into which byproduct material has been introduced during the reporting period;

(2) Name and address of the person who owned or possessed the product or material, into which byproduct material has been introduced, at the time of introduction;

(3) The type and quantity of radionuclide introduced into each product or material; and

(4) The initial concentrations of the radionuclide in the product or material at time of transfer of the byproduct material by the licensee.

(c)(1) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after (Insert the effective date of this rule), the licensee shall separately include data for transfers in prior years not previously reported to the Commission or to an Agreement State.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.11 shall file a report for the current calendar year within 30 days after ceasing distribution.

(d) If no transfers of byproduct material have been made under § 32.11 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a report to the Commission.

11. Section 32.13 is revised to read as follows:

§ 32.13 Same: Prohibition of introduction.

No person may introduce byproduct material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under § 30.14 of this chapter or equivalent regulations of an Agreement State, except in accordance with a license issued under § 32.11.

12. In § 32.14, paragraph (d) is revised to read as follows:

§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.

* * * * *

(d) The Commission determines that the byproduct material is properly contained in the product under the most severe conditions that are likely to be encountered in normal use and handling.

13. In § 32.15, paragraph (d) is revised to read as follows:

§ 32.15 Same: Quality assurance, prohibition of transfer, and labeling.

* * * * *

(d)(1) Label or mark each unit, except timepieces or hands or dials containing tritium or promethium-147, and its container so that the manufacturer or initial transferor of the product and the byproduct material in the product can be identified.

(2) For ionization chamber smoke detectors, label or mark each detector and its point-of-sale package so that:

(i) Each detector has a durable, legible, readily visible label or marking on the external surface of the detector containing:

(A) The following statement: "CONTAINS RADIOACTIVE MATERIAL";

(B) The name of the radionuclide ("americium-241" or "Am-241") and the quantity of activity; and

(C) An identification of the person licensed under § 32.14 to transfer the detector for use under § 30.15(a)(7) of this chapter or equivalent regulations of an Agreement State.

(ii) The labeling or marking specified in paragraph (d)(2)(i) of this section is located where it will be readily visible when the detector is removed from its mounting.

(iii) The external surface of the point-of-sale package has a legible, readily visible label or marking containing:

(A) The name of the radionuclide and quantity of activity;

(B) An identification of the person licensed under § 32.14 to transfer the detector for use under § 30.15(a)(7) or equivalent regulations of an Agreement State; and

(C) The following or a substantially similar statement:

THIS DETECTOR CONTAINS RADIOACTIVE MATERIAL. THE PURCHASER IS EXEMPT FROM ANY REGULATORY REQUIREMENTS.

(iv) Each detector and point-of-sale package is provided with such other information as may be required by the Commission.

14. Section 32.16 is revised to read as follows:

§ 32.16 Certain items containing byproduct material: Records and reports of transfer.

(a) Each person licensed under § 32.14 shall maintain records of all transfers of byproduct material and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.15 of this chapter, giving the specific paragraph designation, or equivalent regulations of an Agreement State.

(b) The report must include the following information on products transferred to other persons for use under § 30.15 or equivalent regulations of an Agreement State:

(1) A description or identification of the type of each product and the model number(s), if applicable;

(2) For each radionuclide in each type of device and each model number, if applicable, the total quantity of the radionuclide;

(3) The number of units of each type of product transferred during the reporting period by model number, if applicable.

(c)(1) The licensee shall file the report, covering the preceding calendar

year, on or before January 31 of each year. In its first report after (Insert the effective date of this rule), the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.14 shall file a report for the current calendar year within 30 days after ceasing distribution.

(d) If no transfers of byproduct material have been made under § 32.14 during the reporting period, the report must so indicate.

(e) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a report to the Commission.

§ 32.17 [Removed]

15. Section 32.17 is removed.

16. Section 32.20 is revised to read as follows:

§ 32.20 Same: Records and material transfer reports.

(a) Each person licensed under § 32.18 shall maintain records of transfer of material identifying, by name and address, each person to whom byproduct material is transferred for use under § 30.18 of this chapter or the equivalent regulations of an Agreement State and stating the kinds, quantities, and chemical and physical form of byproduct material transferred.

(b) The licensee shall file a summary report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the materials are transferred for use under § 30.18 or equivalent regulations of an Agreement State.

(c) For each radionuclide in each chemical and physical form, the report shall indicate the total quantity of each radionuclide and the chemical and physical form, transferred under the specific license.

(d)(1) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after (Insert the effective date of this rule), the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(2) Licensees who permanently discontinue activities authorized by the license issued under § 32.18 shall file a report for the current calendar year within 30 days after ceasing distribution.

(e) If no transfers of byproduct material have been made under § 32.18 during the reporting period, the report must so indicate.

(f) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a summary report to the Commission.

17. In § 32.25, paragraph (c) is revised to read as follows:

§ 32.25 Conditions of licenses issued under § 32.22: Quality control, labeling, and reports of transfer.

* * * * *

(c) Maintain records of all transfers and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.19 of this chapter or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 30.19 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide;

(iii) The number of units of each type of product transferred during the reporting period by model number.

(4)(i) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after (Insert the effective date of this rule), the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.22 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.22 during the reporting period, the report must so indicate.

(6) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a report to the Commission.

18. In § 32.29, paragraph (c) is revised to read as follows:

§ 32.29 Conditions of licenses issued under § 32.26: Quality control, labeling, and reports of transfer.

* * * * *

(c) Maintain records of all transfers and file a report with the Director of Nuclear Material Safety and Safeguards by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the licensé number of the specific licensee.

(2) The report must indicate that the products are transferred for use under § 30.20 of this chapter or equivalent regulations of an Agreement State.

(3) The report must include the following information on products transferred to other persons for use under § 30.20 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each product and the model number(s);

(ii) For each radionuclide in each type of product and each model number, the total quantity of the radionuclide;

(iii) The number of units of each type of product transferred during the reporting period by model number.

(4)(i) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year. In its first report after (Insert the effective date of this rule), the licensee shall separately include data for transfers in prior years not previously reported to the Commission.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.26 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.26 during the reporting period, the report must so indicate.

(6) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a report to the Commission.

§ 32.40 [Removed]

19. Section 32.40 is removed.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

20. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

21. In § 150.20, paragraph (b)(3) is revised to read as follows:

§ 150.20 Recognition of Agreement State licensing.

* * * * *

(b) * * *

(3) Shall not, in any non-Agreement State, in an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person who is specifically licensed by the Commission to receive this material.

* * * * *

Dated at Rockville, Maryland, this 28th day of December, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 06–19 Filed 1–3–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket No. 05–22]

Office of Thrift Supervision

12 CFR Chapter V

[No. 2005–53]

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1243]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Request for Burden Reduction Recommendations; Rules Relating to Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The OCC, Board, FDIC and OTS ("we" or "the Agencies") are reviewing our regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, we request your comments and suggestions on ways to reduce burden with respect to rules regarding Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements, which are in the Capital and Community Reinvestment Act categories of regulations. All comments are welcome. We specifically invite comment on the following issues: whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; whether the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small institutions, is justified; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

This is our last request for comment on categories of regulations in the first 10-year cycle of regulatory review under EGRPRA. We will analyze the comments received and propose burden-reducing changes to our regulations where appropriate. Some of your suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider your suggestions in recommending appropriate changes to Congress.

DATES: Written comments must be received no later than April 4, 2006.

ADDRESSES: You may submit comments by any of the following methods:

EGRPRA Web site: *http://www.EGRPRA.gov*

- Comments submitted at the Agencies' joint Web site will automatically be distributed to all the Agencies. Comments received at the EGRPRA Web site and by other means will be posted on the Web site to the extent possible.

Individual agency addresses: You are also welcome to submit comments to the Agencies at the following contact points (due to delays in paper mail delivery in the Washington area, commenters may prefer to submit their comments by alternative means):

OCC: You should include OCC and Docket Number 05–22 in your comment. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *OCC Web Site: http://www.occ.treas.gov.* Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."
- *E-mail address: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review comments and other

related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- *Viewing Comments Electronically:* You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Information Room at *regs.comments@occ.treas.gov.*
- *Docket:* You may also request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket Number R–1243, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm,* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified as EGRPRA burden reduction comments, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: comments@fdic.gov.* Include "EGRPRA" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: You may inspect comments at the FDIC Public Information Center, Room 100, 801 17th Street, NW., between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments, identified by "No. 2005–53" by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-Mail: regs.comments@ots.treas.gov.* Include "No. 2005–53" in the subject line of the message, and provide your name and telephone number.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery:* Comments may be hand delivered to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office.

Public Inspection: OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a fax to (202) 906–7755. (Please identify the material you would like to inspect to assist us in serving you.) OTS schedules appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date OTS receives a request.

FOR FURTHER INFORMATION CONTACT:

OCC:

- *Heidi Thomas,* Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.
- *Lee Walzer,* Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

Board:

- *Patricia A. Robinson,* Assistant General Counsel, Legal Division, (202) 452–3005.
- *Michael J. O'Rourke,* Counsel, Legal Division, (202) 452–3288.
- *John C. Wood,* Counsel, Division of Consumer and Community Affairs, (202) 452–2412.
- *Kevin H. Wilson,* Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2362.
- For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC:

- *Steven D. Fritts,* Associate Director, Division of Supervision and Consumer Protection, (202) 898–3723.
- *Ruth R. Amberg,* Senior Counsel, Legal Division, (202) 898–3736.
- *Susan van den Toorn,* Counsel, Legal Division, (202) 898–8707.

OTS:

- *Glenn Gimble,* Senior Project Manager, Thrift Policy, Supervision Policy, (202) 906–7158.
- *Josephine Battle,* Program Analyst, Thrift Policy, Supervision Policy, (202) 906–6870.
- *Karen Osterloh,* Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6639.

SUPPLEMENTARY INFORMATION:

I. Overview of the EGRPRA Review and the Steps Taken So Far

The Agencies [1] are asking for your comments and suggestions on ways in which we can reduce regulatory burden consistent with our statutory obligations. Today, we request your input to help us identify which regulatory requirements involving Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements are outdated, unnecessary, or unduly burdensome. We list these rules, which are in the Capital and Community Reinvestment Act categories, in a chart at the end of this notice. Please send us your recommendations at our Web site, *http://www.EGRPRA.gov,* or to one of the listed addresses.

Today's request for comment is the sixth and final notice in our multi-year review of regulations for burden reduction required by section 2222 of EGRPRA.[2] We described the EGRPRA review's requirements in our first

[1] The National Credit Union Administration has participated in planning the EGRPRA review but has issued, and will issue, requests for comment separately.

[2] Public Law 104–208, Sept. 30, 1996, 12 U.S.C. 3311. We published our first notice in the **Federal Register** on June 16, 2003, at 68 FR 35589; our second notice on January 21, 2004, at 69 FR 2852; our third notice on July 20, 2004, at 69 FR 43347; our fouroth ntoice on February 3, 2005, at 70 FR 5571; and our fifth notice on August 11, 2005, at 70 FR 46779. You may view the notices at our Web site, *http://www.EGRPRA.gov.*

EGRPRA notice. In summary, EGRPRA requires us to:

- Categorize our regulations by type.
- Publish the regulations by category to request comment on which regulations contain requirements that are outdated, unnecessary, or unduly burdensome.
- Publish a summary of those comments.
- Eliminate unnecessary regulations to the extent appropriate.
- Report to Congress: summarizing the significant issues raised and their relative merits and analyzing whether legislative change is required to reduce burden.

The first publication and review cycle under EGRPRA must be completed by September 2006. The regulatory response and report to Congress will occur after the publication cycle is finished.

We have identified 13 categories of rules to implement our EGRPRA review. The categories are: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection: Lending Related Rules; Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. You may see the categories and the rules placed within them at our Web site, *http://www.EGRPRA.gov*.

With this notice, we have requested public comment regarding possible burden reduction in all categories of rules. Our June 16, 2003, notice requested comment on three categories: Applications and Reporting; Powers and Activities; and International Operations. Our January 21, 2004, notice requested comment on Consumer Protection: Lending Related Rules. Our July 20, 2004, notice requested comment on Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules. Our February 3, 2005 notice requested comment on three categories: Money Laundering, Safety and Soundness, and Securities. Our August 11, 2005 notice requested comment on three categories: Banking Operations; Directors, Officers and Employees; and Rules of Procedure.

Additionally, an EGRPRA request for comment was included in the recent joint advance notice of proposed rulemaking regarding Risk-Based Capital Guidelines; Capital Adequacy Guidelines; and Capital Maintenance: Domestic Capital Modifications.[3] As a result, a request for comment on those regulations is not duplicated here. In addition, the regulations implementing the Community Reinvestment Act are not included in this notice and request for comment because, during the past two years, the Agencies solicited comment on burden reduction measures for the CRA regulations and received voluminous comments in response.[4] The Agencies have adopted final rules revising the CRA regulations, mindful of the comments related to burden reduction.[5] Today, we request comment on rules regarding Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements, which are in the Capital and Community Reinvestment Act categories, respectively—the regulations on which burden reduction comments have not yet been sought.

In addition to soliciting written comments, we held banker outreach meetings in Orlando, St. Louis, Denver, San Francisco, New York, Nashville, Seattle, Chicago, Phoenix and New Orleans. Approximately 450 bankers attended these meetings. The Agencies have also held outreach meetings with over 100 participants from consumer and community groups to obtain their input on regulatory burden reduction. These meetings were held in San Francisco, Chicago, Washington, DC and Arlington, Virginia. In addition, the Agencies held joint outreach meetings including bankers as well as consumer and community groups in Washington, DC, Los Angeles and Kansas City. You may learn more about the meetings and related recommendations at our EGRPRA Web site, *http://www.EGRPRA.gov*.

We received 19 comments in response to the first notice, about 560 to the second notice, over 100 to the third notice, 123 to the fourth notice and 29 to the fifth notice. The Agencies appreciate the response to our notices and outreach meetings. The written comments and remarks at the meetings came from individuals, banks, savings associations, holding companies, industry trade groups, and consumer and community groups. Many comments contained multiple suggestions for regulatory reform. You may view the comments at our EGRPRA Web site, *http://www.EGRPRA.gov*. We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses.

In addition, Congress has considered various legislative proposals to reduce burden on the financial services industry. In 2004 and 2005, representatives of the Agencies and industry leaders testified before congressional committees about these legislative reform proposals and other ideas for reducing burden on the financial services industry. We will continue to post information about legislative and regulatory reform efforts on our Web site.

II. Request for Comment on Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements

Today we are asking the public to identify ways in which the rules pertaining to Prompt Corrective Action and the Disclosure and Reporting of CRA-Related Agreements (which are part of the Capital and Community Reinvestment Act categories) may be outdated, unnecessary, or unduly burdensome. The chart at the end of this notice sets forth the regulations about which we seek comment.

Specific issues to consider. While all comments are welcome, we specifically invite comment on the following issues:

A. Need for statutory change. (1) Do any statutory requirements underlying the rules impose unnecessary, redundant, conflicting or unduly burdensome requirements? (2) Are there less burdensome alternatives?

B. Need and purpose of the regulations. (1) Are the regulations consistent with the purposes of the statutes that they implement? (2) Have circumstances changed so that a rule is no longer necessary or needs revision? (3) Do changes in the financial products and services offered to consumers and businesses suggest a need to revise certain regulations (or statutes)? (4) Do any of the regulations impose compliance burdens not required by the statutes they implement?

C. General approach/flexibility. (1) Would a different general approach to regulating achieve statutory goals with less burden? (2) Do any of these rules impose unnecessarily inflexible requirements?

D. Effect of the regulations on competition. Do any of the regulations

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[3] 70 FR 61068, 61071 (Oct. 20, 2005).

[4] *See* 66 FR 37602 (July 19, 2001) (Joint Advance Notice of Proposed Rulemaking); 69 FR 5729 (Feb. 6, 2004) (Joint Notice of Proposed Rulemaking); 69 FR 51611 (Aug. 20, 2004) (FDIC Notice of Proposed Rulemaking); 69 FR 56175 (Sept. 20, 2004) (FDIC extension of comment period for proposed rule); 69 FR 68257 (Nov. 24, 2004) (OTS Notice of Proposed Rulemaking); and 70 FR 12148 (Mar. 11, 2005) (OCC, FRB and FDIC Notice of Proposed Rulemaking).

[5] *See* 69 FR 51155 (Aug. 18, 2004) (OTS Final Rule); 70 FR 10023 (Mar. 2, 2005) (OTS Final Rule); and 70 FR 44256 (Aug. 2, 2005) (OCC, FRB and FDIC Final Rule).

or statutes create competitive disadvantages for insured depository institutions compared to the rest of the financial services industry or competitive disadvantages for one type of insured depository institution over another?

E. Reporting, recordkeeping, and disclosure requirements. (1) Which reporting, recordkeeping, or disclosure requirements impose the most compliance burdens? (2) Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?

F. Consistency and redundancy. (1) Are any of the requirements under one regulation inconsistent with or duplicative of requirements under another regulation? (2) If so, are the inconsistencies not warranted by the purposes of the regulations?

G. Clarity. Are any of the regulations drafted unclearly?

H. Burden on small insured institutions. We have particular interest in minimizing burden on small insured institutions (those with assets of $150 million or less). Are there appropriate ways to amend these rules to minimize adverse economic impact on small insured institutions?

The Agencies appreciate the efforts of all interested parties to help us eliminate outdated, unnecessary, or unduly burdensome regulatory requirements.

RULES FOR WHICH WE ARE REQUESTING COMMENT NOW

[Capital and the Community Reinvestment Act]

Subject	National banks	State member banks	State non-member banks	Thrifts	Holding companies Bank[6] Thrift
1. Capital					
Interagency Regulations: Prompt Corrective Action.	12 CFR part 6	12 CFR part 208, subpart D[Reg. H]; 12 CFR 263.201–.205.	12 CFR part 325, subpart B.	12 CFR part 565	12 CFR 208.44(i); 12 CFR 263.201–.202, .205. 12 CFR 565.5(i); 12 CFR 565.7; 12 CFR 565.10.
2. Community Reinvestment Act					
Interagency Regulations: Disclosure and Reporting of CRA–Related Agreements.	12 CFR part 35	12 CFR part 207 [Reg. G].	12 CFR part 346	12 CFR part 533	12 CFR part 207 [Reg. G]. 12 CFR part 533.

[6] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Dated: December 23, 2005.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System on December 8, 2005.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 5th day of December 2005.

Robert E. Feldman,

Executive Secretary.

Dated: December 6, 2005.

John M. Reich,

Director, Office of Thrift Supervision.

[FR Doc. 06–12 Filed 1–3–06; 8:45 am]

BILLING CODE 4810–33–P 6210–01–P 6714–01–P 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23475; Directorate Identifier 2005–NM–117–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all EMBRAER Model ERJ 170 airplanes. This proposed AD would require revising the Airworthiness Limitations section (ALS) of the airplane maintenance manual (AMM) to include new, specific maintenance tasks related to the incorporation of a new horizontal stabilizer actuator. This proposed AD also would require revising the ALS of the AMM to include revised repetitive inspection intervals for certain tasks in the maintenance plan related to the aileron and flap/slat flight controls system. This proposed AD results from safety assessments of the aileron and flap/slat flight controls system, conducted after the type certification of the airplane, which showed that some dormant faults did not comply with the safety assessment criteria. We are proposing this AD to prevent failure of the aileron and flap/slat controls system, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the

instructions for sending your comments electronically.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA–2005–23475; Directorate Identifier 2005–NM–117–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model ERJ 170 airplanes. The DAC advises that a review of safety assessment reports for aileron and flap/slat flight control systems, conducted after type certification of the airplane, showed that certain assumptions used in the analysis of some dormant faults did not comply with the applicable safety assessment criteria. If those dormant faults persist and are combined with other faults that could become evident during flight, the safety margins for the airplane could be reduced significantly. The DAC also advises that incorporating a new horizontal stabilizer actuator for the affected airplanes means that new, specific maintenance tasks are required for the Model ERJ 170 fleet. Dormant faults and improper maintenance tasks, if not corrected, could result in failure of the aileron and flap/slat controls system, and consequent reduced controllability of the airplane.

Relevant Service Information

EMBRAER has also issued Temporary Revision (TR) 1–3, dated December 27, 2004, to EMBRAER 170 Maintenance Review Board (MRB) Report MRB–1621. This document revises the repetitive inspection intervals of MRB tasks 27–11–00–002 (Operational Check of Control-Yoke Disconnect System) and 27–11–11–001 (Operational Check of Aileron Override Unit).

EMBRAER has also issued the following revisions to the maintenance tasks in the EMBRAER 170 Airplane Maintenance Manual (AMM), all dated January 25, 2005. Any applicable corrective actions are done in accordance with the applicable AMM task.

EMBRAER MAINTENANCE TASKS

AMM chapter	Task No.	Description
27–11–03	27–11–03–710–801–A	Test for broken aileron control cables, and replace the aileron control cable if necessary.
27–11–03	27–11–03–720–801–A	Test the tension of the aileron control cables, and adjust if necessary.
27–41–01	27–41–01–210–801–A	Do a general visual inspection for the presence of locking nuts in the cover plate of the external ball return for the horizontal stabilizer trim actuator (HSTA); and for cracks, or excessive damage of the external ball return cover plate. If one or more nuts are missing or if there is damage on the cover plate, the corrective action is to replace the HSTA.
27–41–01	27–41–01–220–801–A	Do a detailed visual inspection of the HSTA no-back gearbox for signs of oil leakage, oil contamination, damaged gears, damaged pawl, damaged O-ring, damaged lower gimbal assembly, damaged or loose wiring, broken wire harnesses, damaged bonding strap, and cracked mechanical stops; and corrective actions if necessary. The corrective actions range from replacing a component to replacing the HSTA (for a damaged pawl, damage to the lower gimbal assembly, damaged bonding strap, and damaged mechanical stop).
27–41–01	27–41–01–220–802–A	Do a detailed visual inspection for damage of the ballscrew of the HSTA, and replace the HSTA if necessary.
27–81–01	27–81–01–710–801–A	Adjust slat actuators and do an operational test.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–03–02,

dated April 20, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness in the EMBRAER 170 AMM to include new, specific maintenance tasks related to the incorporation of a new horizontal stabilizer actuator; and revised repetitive inspection intervals for certain tasks in the maintenance plan related to the aileron and flap/slat flight controls system.

Difference Between the Proposed AD and the Brazilian Airworthiness Directive

Brazilian airworthiness directive 2005–03–02 specifies that operators should alter the approved maintenance plan, but does not specify that the changes are limitations. Therefore, this proposed AD would specify a revision to the Airworthiness Limitations section of the Instructions for Continued Airworthiness. This difference has been coordinated with the CTA.

Costs of Compliance

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

This proposed AD would affect about 42 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,730, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–23475; Directorate Identifier 2005–NM–117–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2005

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from safety assessments of the aileron and flap/slat flight controls system, conducted after the type certification of the airplane, which showed that some dormant faults did not comply with the safety assessment criteria. We are issuing this AD to prevent failure of the aileron and flap/slat controls system, which could result in reduced controllability of the airplane.

Compliance

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

Airplane Maintenance Manual (AMM) Revisions

(f) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness in the EMBRAER 170 AMM to include revisions to the maintenance tasks and repetitive inspections intervals, and applicable corrective actions that are approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (DAC), (or its delegated agent). The revisions in paragraphs (f)(1) and (f)(2) of this AD are one approved method.

(1) EMBRAER Temporary Revision (TR) 1–3 of the EMBRAER 170 Maintenance Review Board (MRB) Report MRB–1621, dated December 27, 2004, to the EMBRAER 170 AMM that includes revised repetitive inspection intervals for MRB tasks 27–11–00–002 (Operational Check of Control-Yoke Disconnect System) and 27–11–11–001 (Operational Check of Aileron Override Unit). Where the revision requires a compliance time that is less than 700 flight hours after the effective date of this AD, do the action within 700 flight hours after the effective date of this AD. Thereafter, except as provided by paragraph (h) of this AD, no alternative inspection intervals may be approved.

(2) The revised EMBRAER 170 AMM maintenance tasks identified in Table 1 of this AD that include new maintenance tasks and inspections related to the incorporation of a new horizontal stabilizer actuator. Thereafter, except as provided by paragraph (h) of this AD, no alternative tasks or inspections may be approved.

TABLE 1.—EMBRAER 170 AMM MAINTENANCE TASKS

AMM chapter	Task Nos.	Date	Title
27–11–03	27–11–03–710–801–A, 27–11–03–720–801–A.	January 25, 2005	Aileron Control Cable—Adjustment/Test.
27–41–01	27–41–01–210–801–A, 27–41–01–220–801–A, 27–41–01–220–802–A.	January 25, 2005	Horizontal Stabilizer Trim Actuator—Inspection/Check.
27–81–01	27–81–01–710–801–A	January 25, 2005	Slat Actuator—Adjustment/Test.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2005–03–02, dated April 20, 2005, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–8242 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require an inspection of the main landing gear (MLG) main fitting for cracks, and repair if necessary. This proposed AD would also require installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane. This proposed AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are proposing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

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

Contact Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2005–23476; Directorate Identifier 2005–NM–204–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 airplanes. The CAA–NL advises that a main landing gear (MLG) main fitting failed on a Fokker Model F.28 Mark 0100 airplane that was braking while moving backward. The MLG main fitting broke into two pieces, causing the lower part including the sliding member and the main wheels to separate from the upper main fitting part. An investigation revealed a 4.5 mm fatigue crack in the main fitting, which originated from one of the MLG filler and bleeder ports. Smaller cracks, typically 0.5 mm—1.0 mm, have also

been found on other Fokker Model F.28 Mark 0100 airplanes in the area of the MLG filler and bleeder ports. This condition, if not corrected, could result in reduced structural integrity of the MLG main fitting.

Relevant Service Information

Messier-Dowty has issued Service Bulletin F100–32–106, dated February 18, 2005, including Appendices A through D. The service bulletin describes procedures for an eddy current inspection of the MLG main fitting for cracks, and repair if necessary. If all damage has not been removed during repair, the service bulletin specifies contacting the manufacturer. The service bulletin also specifies that flight with a crack is allowed under certain circumstances.

The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–002, dated April 14, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

Issuance of Related Dutch Airworthiness Directive

The CAA–NL has previously issued Dutch airworthiness directive 2002–115/2, dated October 8, 2004. Among other actions, that airworthiness directive specifies installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Among the Proposed AD, Service Bulletin, and Dutch Airworthiness Directive." This AD would also require installing a placard and revising the airplane flight manual to include procedures to prohibit the application of brakes during backward movement of the airplane.

Differences Among the Proposed AD, Service Bulletin, and Dutch Airworthiness Directive

Operators should note that, although the Dutch airworthiness directive 2002–115/2, dated October 8, 2004, and the Accomplishment Instructions of Fokker Service Bulletin F100–32–106, dated February 18, 2005, provide procedures for submitting a report of all findings to the manufacturer, this proposed AD would not require that action.

Fokker Service Bulletin F100–32–106 specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the CAA–NL (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the CAA–NL approve would be acceptable for compliance with this proposed AD.

Unlike the procedures described in Fokker Service Bulletin F100–32–106, this proposed AD would not permit further flight if any crack is detected in the MLG main fitting. We have determined that, because of the safety implications and consequences associated with that cracking, any cracked MLG main fitting must be repaired before further flight.

Although Dutch airworthiness directive 2002–115/2, dated October 8, 2004, specifies that the AFM revision be done before further flight, this proposed AD would require that the AFM revision be done within 14 days. Revising the AFM within 14 days represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Clarification of Concurrent Action

Although Fokker Service Bulletin F100–32–106 mentions that Fokker Service Bulletin F100–32–104, Revision 2, dated October 30, 2003, must be done before that service bulletin, this proposed AD would not require accomplishing Fokker Service Bulletin F100–32–104 before Fokker Service Bulletin F100–32–106. The actions specified in Fokker Service Bulletin F100–32–104 are similar to the actions specified in Fokker Service Bulletin F100–32–106. Therefore it is necessary to accomplish only the actions in Fokker Service Bulletin F100–32–106 to address the unsafe condition.

Interim Action

We consider this proposed AD interim action. If final action is later identified, we may consider further rulemaking then.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	2	$65	$0	$130	11	$1,430
AFM Revision and Placard Installation	1	65	0	65	11	715

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2005–23476; Directorate Identifier 2005–NM–204–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category; equipped with Messier-Dowty Main Landing Gears (MLGs).

Unsafe Condition

(d) This AD results from a report that an MLG main fitting failed on an airplane that was braking while moving backward. We are issuing this AD to detect and correct cracks in the MLG main fitting, which could result in reduced structural integrity of the MLG main fitting.

Compliance

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

Airplane Flight Manual (AFM) Revision and Placard Installation

(f) Within 14 days after the effective date of this AD, amend the Limitations Section of the AFM to prohibit application of brakes during backward movement of the airplane. This may be done by inserting a copy of this AD in the AFM.

Note 1: When a statement to prohibit application of brakes during backward movement of the airplane has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(g) Within 14 days after the effective date of this AD, affix a placard on the pedestal, next to the parking brake handle, having the following wording: "Applicaction of Brakes During Backward Movement Is Prohibited."

Inspection and Corrective Action

(h) At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Do an eddy current inspection of the MLG main fittings and repair before further flight as applicable, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin F100–32–106, dated February 18, 2005, including Appendices A through D, except as provided by paragraphs (i) and (j) of this AD.

(1) For airplanes on which an inspection has not been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 3 months after the effective date of this AD.

(2) For airplanes on which an inspection has been done in accordance with Messier-Dowty Service Bulletin F100–32–104, Revision 2, dated October 30, 2003: Within 2,000 flight cycles since the last inspection done in accordance with the service bulletin or within 3 months after the effective date of this AD, whichever occurs later.

Exceptions to the Service Bulletin

(i) Where Fokker Service Bulletin F100–32–106, dated February 18, 2005, including Appendices A through D, specifies contacting the manufacturer for repair: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority—The Netherlands (CAA–NL) (or its delegated agent).

(j) Although Fokker Service Bulletin F100–32–106, dated February 18, 2005, including Appendices A through D, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(k) As of the effective date of this AD, no person may install, on any airplane, a Messier-Dowty MLG, unless it has been inspected/repaired according to paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(m) Dutch airworthiness directives 2002–115/2, dated October 8, 2004; and NL–2005–002, dated April 14, 2005, also address the subject of this AD.

Issued in Renton, Washington, on December 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–8240 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23478; Directorate Identifier 2005–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. This proposed AD would require revising the Limitations section of the airplane flight manual (AFM) by incorporating revised takeoff performance tables. This proposed AD results from a correction of the power setting logic and table limits in the performance model by the engine manufacturer. We are proposing this AD to ensure that the flightcrew is provided

with correct information to ensure a safe takeoff at certain altitudes.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

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

Contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2005–23478; Directorate Identifier 2005–NM–175–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified us that an unsafe condition may exist on Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes. The CAAI advises that the engine manufacturer has corrected the power setting logic and table limits in the performance model. This correction was necessary to bring the model in line with the control software currently installed in the Full Authority Digital Engine Control (FADEC). The new power setting logic sets lower takeoff and automatic performance reserve (APR) N1 values. This applies to elevations of 6,000 feet and higher when outside air temperature (OAT) is below standard day conditions, as defined by the Instrumentation, Systems, and Automations Society (ISA). This correction is intended to ensure that the flightcrew is provided with correct information to ensure a safe takeoff at certain altitudes.

Relevant Service Information

Gulfstream Aerospace LP has issued Temporary Revision (TR) 7, dated August 18, 2003, to the Gulfstream 200 Airplane Flight Manual. The TR describes procedures for incorporating revised takeoff performance tables to prevent reduced balanced field length and single engine climb performance. Accomplishing the actions specified in the TR is intended to adequately address the unsafe condition. The CAAI mandated the service information and issued Israeli airworthiness directive 72–03–05–09, dated September 22, 2003, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 82 airplanes of U.S. registry. The proposed AFM revision would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $5,330, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket No. FAA–2005–23478; Directorate Identifier 2005–NM–175–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Gulfstream Aerospace LP Model Galaxy and Model Gulfstream 200 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from an engine performance modification done by the engine manufacturer. We are issuing this AD to ensure that the flightcrew is provided with correct information to ensure a safe takeoff at certain altitudes.

Compliance

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

Airplane Flight Manual (AFM) Revision

(f) Within 50 flight hours after the effective date of this AD: Revise the Limitations section of the Gulfstream 200 AFM, to include the information in Gulfstream Temporary Revision (TR) 7, dated August 18, 2003, as specified in the TR. The TR includes procedures for incorporating revised takeoff performance tables. Thereafter, operate the airplane according to the limitations and procedures in the TR. This may be done by inserting a copy of Gulfstream TR 7 in the AFM. When the TR has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Gulfstream TR 7.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Israeli airworthiness directive 72–03–05–09, dated September 22, 2003, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–8241 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23477; Directorate Identifier 2005–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. This proposed AD would require a one-time detailed inspection for corrosion of the hinge bracket assembly of the left and right main landing gear (MLG) doors, and corrective action if necessary. This proposed AD results from in-service reports of hinge bracket failures on the MLG doors. We are proposing this AD to prevent failure of the hinge bracket on the MLG door, which could result in separation of the door, consequent structural damage to the airplane, and possible injury to people on the ground.

DATES: We must receive comments on this proposed AD by February 3, 2006.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2005–23477; Directorate Identifier 2005–NM–181–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal

information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on certain BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. The CAA advises of in-service reports of hinge bracket failures on the main landing gear (MLG) doors. The failures were caused by stress corrosion of the bearing housing of the hinge bracket, which was accelerated by the subsequent expansion of existing corrosion. This condition, if not corrected, could result in separation of the door, consequent structural damage, and possible injury to people on the ground.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.52–113, Revision 1, dated February 11, 2005. The ISB describes procedures for a one-time detailed inspection for corrosion of the hinge bracket assembly of the left and right MLG doors, and corrective action if necessary. The corrective action for corrosion involves replacement of the hinge bracket assembly with a new assembly and application of protective treatment; the corrective action for light corrosion involves removing the corrosion and applying protective treatment. If no corrosion is found, the service bulletin describes procedures for applying protective treatment. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA mandated the service information and issued British airworthiness directive G–2005–0017, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 35 airplanes of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed actions for U.S. operators is $9,100, or $260 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2005–23477; Directorate Identifier 2005–NM–181–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 3, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; as identified in BAE Systems

(Operations) Limited Inspection Service Bulletin ISB.52–113, Revision 1, dated February 11, 2005.

Unsafe Condition

(d) This AD results from in-service reports of hinge bracket failures on the main landing gear (MLG) doors. We are issuing this AD to prevent failure of the hinge bracket on the MLG door, which could result in separation of the door, consequent structural damage to the airplane, and possible injury to people on the ground.

Compliance

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

Inspection/Corrective Action

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Perform a one-time detailed inspection for corrosion of the hinge bracket assembly of the left and right MLG doors by doing all the applicable actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.52–113, Revision 1, dated February 11, 2005. Perform any applicable corrective action before further flight in accordance with the service bulletin. If no corrosion is found, before further flight, apply protective treatment in accordance with the service bulletin.

(1) For airplanes on which the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is on or before February 28, 1991: Within 192 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever is later.

(2) For airplanes on which the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness is after February 28, 1991: Within 24 months after the effective date of this AD.

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

Inspections Accomplished According to Previous Issue of Service Bulletin

(g) Inspections accomplished before the effective date of this AD according to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.52–113, dated February 2, 2001, are considered acceptable for compliance with the corresponding action specified in this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, a hinge bracket assembly of the left and right MLG doors, unless it has been inspected (and any corrective actions done) according to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.52–113, Revision 1, dated February 11, 2005.

No Reporting Required

(i) Although BAE Systems (Operations) Limited Inspection Service Bulletin ISB.52–113, Revision 1, dated February 11, 2005, referenced in this AD, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) British airworthiness directive G–2005–0017, dated July 6, 2005, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–8243 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–360–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 777–200, and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to Boeing Model 747–400, 777–200, and 777–300 series airplanes, that would have required an inspection of the flight deck humidifier to determine certain part numbers. That proposed AD also would have required, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the flight deck humidifier, if necessary. For other airplanes, that proposed AD would have required replacing the cell stack with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequently deactivating the humidifier system, if necessary. The proposed AD also would have allowed blanking plates to be replaced with cell stacks. This new action revises the proposed rule by adding airplanes to the applicability, requiring an inspection of the flight deck humidifier to determine certain part numbers on certain airplanes, and requiring replacement of the cell stack on certain other airplanes. The actions specified by this new proposed AD are intended to prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 30, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–360–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (425) 917–6481; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–360–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to Boeing Model 747–400, 777–200, and 777–300 series airplanes, equipped with a Hamilton Sundstrand flight deck humidifier, was published as a supplemental notice of proposed rulemaking (referred to hereafter as the first SNPRM) in the **Federal Register** on January 6, 2005 (70 FR 1211).

The first SNPRM would have required an inspection of the flight deck humidifier to determine certain part numbers. The first SNPRM also would have required, for certain airplanes, replacing the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacing the cell stack with an end plate and subsequent deactivation of the flight deck humidifier, if necessary. For other airplanes, the first SNPRM would have required replacing the cell stack with a supplier-tested cell stack, or replacing the cell stack with a blanking plate and subsequent deactivation of the humidifier system, if necessary. The first SNPRM also would have allowed end plates or blanking plates to be replaced with cell stacks.

The first SNPRM was prompted by reports of sagging cell stack membranes of the flight deck humidifiers. That condition, if not corrected, could result in an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck.

Actions Since Issuance of First SNPRM

Since the issuance of the first SNPRM, Boeing has issued Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005 (Revision 1, dated October 26, 2000, was referenced as an applicable source of service information for doing the actions in that SNPRM); and Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005 (Revision 1, dated September 7, 2000, was referenced as an applicable source of service information for doing the actions in the first SNPRM). Revision 2 of the alert service bulletins contains essentially the same procedures for the replacement of certain cell stacks of the flight deck humidifier. However, Revision 2 of the alert service bulletins adds airplanes to the effectivity. For those airplanes, Revision 2 of the alert service bulletin adds a procedure to inspect for a certain flight deck humidifier and inspect for a certain cell stack if necessary. Revision 2 of the alert service bulletins also specifies on which airplanes the replacement should be accomplished.

We have made the following changes to the first SNPRM:

- We have revised the applicability of this second SNPRM to reference Revision 2 of the alert service bulletins.
- We have referenced Revision 2 of the alert service bulletins as the appropriate source of service information for accomplishing the cell stack replacements.
- We have also revised the format of this second SNPRM to clarify that a new or supplier-tested cell stack may be installed on flight deck humidifiers that have a blanking plate; paragraphs (a) and (d) of this second SNPRM (cited as paragraphs (b) and (e) of the first SNPRM) include the information on blanking plate replacement that was specified in paragraphs (b)(3) and (e)(3) of the first SNPRM. In addition, for the blanking plate replacement specified in paragraph (a) of this second SNPRM, we specify that the replacement be done in accordance with Hamilton Sundstrand Service Bulletin 821486–21–01, dated March 15, 2000, and that if the flight deck humidifier is activated after the replacement, the humidifier must be activated in accordance with Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999.
- We have revised the format of this second SNPRM to require that certain airplanes do the inspections for part numbers and then replace the cell stack if necessary and that certain other airplanes replace the cell stack. Revision 2 of the alert service bulletins specifies on which airplanes (identified according to groups in the alert service bulletins) to do the inspection and then the replacement if necessary, and on which airplanes to do the replacement.
- We have revised the cost estimate of this second SNPRM.

Comments

We have also given due consideration to the comments received in response to the first SNPRM.

Request To Revise Number of Affected Airplanes

One commenter, the manufacturer, requests that the number of airplanes that could be fitted with the potentially defective cell stack be revised from 114 airplanes, as stated in the "Request to Withdraw the Proposed AD" section of the first SNPRM, to 176 airplanes. The commenter states that 176 humidifiers have been delivered that could have the potentially defective cell stacks.

We agree with the commenter that the total number of airplanes that could be fitted with the potentially defective cell stack is 176. We have revised the number in the Cost Impact section of this second SNPRM.

Request To Allow Additional Records Review

The same commenter requests that we add an additional records review to allow operators to show compliance

with the intent of the first SNPRM. The commenter states that if an airplane or retrofit kit was delivered after December 16, 1999, and the record review shows that the humidifier or cell stack was not replaced since, no inspection or replacement of the humidifier is needed. The commenter notes that December 16, 1999 is the delivery date of the first airplane that was delivered with an acceptable cell stack that was screened in production. The commenter contends that all humidifier deliveries would thereafter contain a cell stack that is not susceptible to the unsafe condition.

We partially agree with the commenter. We acknowledge that airplanes delivered after December 16, 1999, would not require that the humidifier be inspected or replaced if there has not been any maintenance on the humidifier and the appropriate part markings could be determined. However, we have not revised the requirements for the records review specified in the first SNPRM since this review would include airplanes delivered with a known good cell stack. As specified in paragraphs (c) and (f) of this second SNPRM, a records review would be allowed in lieu of the inspection.

Request To Revise Nomenclature

The same commenter requests that the term "end plate" in the first SNPRM be revised to "blanking plate." The commenter states that an end plate is actually a part that exists in the cell stack assembly, while a blanking plate is a part that can be installed in lieu of the cell stack. The commenter recommends that the first SNPRM describe part number (P/N) 1001157–1 as a blanking plate.

We agree with the commenter. Where the first SNPRM specifies an end plate, we have revised this second SNPRM to specify a blanking plate.

Clarification of P/Ns

Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005, specifies the cell stack P/N as 103111–2 in paragraph 3. of "Group 2–3: Part 3—Cell Stack Part Number Inspection" of the Accomplishment Instructions of the service bulletin. The correct P/N is 1003111–2.

Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005, specifies the cell stack P/N as 10311–1 in paragraph 2.C. of "Parts Necessary For Each Airplane" and 2.D. of "Parts Necessary to Change Spares" of the service bulletin. The correct P/N is 1003111–1.

Explanation of Change Made to This AD

We have revised paragraph (d)(1) of this second SNPRM to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

Since this change expands the scope of this second SNPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 176 airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this second SNPRM. The cost per airplane would range between $390 and $6,248 per airplane, depending on the actions chosen by the operator. The fleet cost estimate would not exceed $181,192.

ESTIMATED COSTS

Model/series	Action	Work hours	Hourly rate	Parts cost	Cost per airplane
747–400, 777–200, 777–300.	Inspect flight deck humidifier for part number and inspect flight deck humidifier cell stack for part number.	1	$65	$0	$65
747–400	Replace cell stack with new or supplier-tested cell stack.	3	65	5,100	5,295
747–400	Replace cell stack with blanking plate and deactivate humidifier.	5	65	0	325
777–200, 777–300	Replace cell stack with blanking plate	3	65	0	195
777–200, 777–300	Replace cell stack with new or supplier-tested cell stack.	3	65	6,053	6,248
777–200, 777–300	Replace blanking plate with supplier-tested cell stack	1	65	6,053	6,118

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–360–AD.

Applicability: Model 747–400, 777–200, and 777–300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005; and Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005.

Compliance: Required as indicated, unless accomplished previously.

To prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck, accomplish the following:

Cell Stack Replacement: Model 747–400 Series Airplanes

(a) For Model 747–400 series airplanes identified as Group 1 in Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005: Within 90 days after the effective date of this AD, do the replacement specified in paragraph (a)(1) or (a)(2) of this AD. For flight deck humidifiers with a blanking plate: If the blanking plate is removed and a new or supplier-tested cell stack is installed, the replacement must be done in accordance with the Accomplishment Instructions of Hamilton Sundstrand Service Bulletins 821486–21–01, dated March 15, 2000; and after the replacement, the flight deck humidifier may be activated in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999.

(1) Replace the cell stack of the flight deck humidifier with a supplier-tested cell stack, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005.

(2) Replace the cell stack of the flight deck humidifier with a blanking plate and, before further flight, deactivate the flight deck humidifier, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005.

Note 1: Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005, refers to Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999, as an additional source of service information for deactivating the humidifier.

Note 2: Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005, refers to Hamilton Sundstrand Service Bulletins 821486–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacements.

(b) Replacement of the cell stack before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–21A2414, dated April 13, 2000; or Revision 1, dated October 26, 2000; is acceptable for compliance with the applicable requirements of paragraphs (a)(1) and (a)(2) of this AD.

Inspections/Records Review: Model 747–400 Series Airplanes

(c) For Model 747–400 series airplanes identified as Groups 2 and 3 in Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine whether part number (P/N) 821486–1 is installed, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–21A2414, Revision 2, dated July 7, 2005. Instead of inspecting the flight deck humidifier, a review of airplane maintenance records is acceptable if the P/N of the flight deck humidifier can be positively determined from that review.

(1) If a P/N other than P/N 821486–1 is installed, no further action is required by this paragraph.

(2) If P/N 821486–1 is installed, inspect the flight deck humidifier cell stack to determine whether P/N 821482–1 is installed and "DEV 13433" is not marked next to the cell stack part number, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether "DEV 13433" is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review.

(i) If the cell stack has P/N 821482–2 or 1003111–2, or if "DEV 13433" is marked next to P/N 821482–1, no further action is required by this paragraph.

(ii) If the cell stack has P/N 821482–1 and does not have "DEV 13433" marked next to the cell stack part number: Before further flight, do the replacement specified in paragraph (a) of this AD.

Cell Stack Replacement: Model 777–200 and –300 Series Airplanes

(d) For Model 777–200 and 777–300 series airplanes identified as Groups 1 through 5 in Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005: Within 90 days after the effective date of this AD, do the replacement specified in paragraph (d)(1) or (d)(2) of this AD. For flight deck humidifiers with a blanking plate: If a blanking plate is removed and a new or supplier-tested cell stack installed, the cell stack installation must be done in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005; and after the installation, the humidifier system may be activated in accordance with Accomplishment Instructions of Boeing Service Bulletin 777–21–0035, Revision 1, dated October 19, 2000.

(1) Replace the cell stack with a blanking plate, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005; and, before further flight, deactivate the humidifier system in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization who has been authorized by the Manager, Seattle ACO, to make those findings. For a deactivation method to be approved, the deactivation must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(2) Replace the cell stack with a supplier-tested cell stack, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005.

Note 3: Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005, refers to Hamilton Sundstrand Service Bulletin 816086–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacement.

(e) Replacement of the cell stack before the effective date of this AD in accordance with Boeing Service Bulletin 777–21A0048, Revision 1, dated September 7, 2000, is

acceptable for compliance with the applicable requirements of paragraphs (d)(1) and (d)(2) of this AD.

Inspections/Records Review: Model 777–200 and –300 Series Airplanes

(f) For Model 777–200 and 777–300 series airplanes identified as Groups 6 and 7 in Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine if it is P/N 816086–1, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–21A0048, Revision 2, dated July 14, 2005. Instead of inspecting the flight deck humidifier, a review of airplane maintenance records is acceptable if the part number (P/N) of the flight deck humidifier can be positively determined from that review.

(1) If a P/N other than P/N 816086–1 is installed, no further action is required by this paragraph.

(2) If P/N 816086–1 is installed, inspect the flight deck humidifier cell stack to determine whether P/N 822976–2 is installed and "DEV 13433" is not marked next to the cell stack part number, in accordance with Part 4 of the Accomplishment Instruction of the alert service bulletin. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether "DEV 13433" is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review.

(i) If the cell stack has P/N 822976–3 or 1003111–1, or if "DEV 13433" is marked next to P/N 822976–2, no further action is required by this paragraph.

(ii) If the cell stack has P/N 822976–2 and does not have "DEV 13433" marked next to the cell stack part number, before further flight; do the replacement specified in paragraph (d) of this AD.

Parts Installation

(g) On Model 747–400 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 821482–1, unless "DEV 13433" is also marked next to the cell stack part number.

(h) On Model 777–200 and 777–300 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 822976–2, unless "DEV 13433" is also marked next to the cell stack part number.

Alternative Methods of Compliance

(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

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

Issued in Renton, Washington, on December 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–8244 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 370

[Docket No. RM05–35–000]

Standard of Review for Modifications to Jurisdictional Agreements

December 27, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a notice of proposed rulemaking to propose a general rule regarding the standard of review applicable to proposed modifications to Commission-jurisdictional agreements under the Federal Power Act and Natural Gas Act. The intent of the proposed rulemaking is to promote the sanctity of contracts, recognize the importance of providing certainty and stability in competitive electric energy markets, and provide adequate protection of energy customers. The Commission is inviting comments on the notice of proposed rulemaking.

DATES: Comments are due February 3, 2006.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and fourteen (14) copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: Hadas Kozlowski, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8030. Shaheda Sultan, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8845. Richard Howe, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8289.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Commission is proposing to amend its regulations to provide a general rule regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements under the Federal Power Act (FPA) and the Natural Gas Act (NGA) that are not agreed to by the signatories (or their successors). Specifically, the Commission proposes to repeal its regulation [1] at 18 CFR 35.1(d).

2. In its place, the Commission proposes a regulation which provides that, in the absence of prescribed contractual language enabling the Commission to review proposed modification to agreements that are not agreed to by the signatories (or their successors) under a just and reasonable standard, the Commission will review such agreements under a public interest standard, in accordance with the Mobile-Sierra doctrine.[2] However, this regulation will not apply to transmission service agreements executed under an open access transmission tariff as provided for under Order No. 888 [3] and agreements for the transportation of natural gas (to the extent that they are executed pursuant to the standard form of service agreements in pipeline tariffs), as these forms of service agreement already mandate the use of the just and reasonable standard of review.

3. This regulation will be applied on a prospective basis, *i.e.*, it will become effective for all Commission-jurisdictional contracts under the FPA or the NGA executed 30 days or more after the final rule is published in the **Federal Register**.

II. Background

4. The FPA and the NGA require that rates, terms, and conditions of service

[1] We also terminate our proposed policy statement in Docket No. PL02–7–000.

[2] *See United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pocific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

[3] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities ond Recovery of Stranded Costs by Public Utilities ond Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

must be "just and reasonable" and not unduly discriminatory or preferential.[4] The seller can propose rates, terms, and conditions of service and the Commission can approve them if it finds they meet the just and reasonable standard.[5] The Commission can also on its own motion or on the filing of a complaint of a third party investigate existing rates, terms, and conditions of jurisdictional service and alter them prospectively, if it finds that such rates are no longer just and reasonable.[6] The FPA and the NGA also provide that contracts between individual parties can be used to set rates, terms, and conditions.[7] In such contracts, sellers may agree to voluntarily restrict some or all of their freedom to change the contract rates, terms, and conditions, and buyers may agree to restrict their right to request the Commission to change the rate, terms, and conditions. Additionally, sometimes the parties to the contract may attempt to restrict not only themselves but also the Commission from changing the contract provisions under the "just and reasonable" standard. In some cases, the seller and buyer have contracted for a particular rate,[8] and not expressly reserved their rights to propose contractual changes, the contract has been filed with the Commission, and the Commission has permitted the rate to become effective. In these cases, the courts have differed on the applicable standard of review when a seller seeks, over the objections of the buyer, to file a new rate (under section 205 of the FPA or section 4 of the NGA), or the buyer or the Commission seeks (under section 206 of the FPA or section 5 of the NGA) to change the existing contract rate. In particular, courts have differed on whether the "just and reasonable" or the "public interest" standard of review should apply in that situation.[9] Although not clearly defined,[10] the "public interest" standard of review has been held to be higher or stricter than the "just and reasonable" standard of review.[11]

5. In 1958, in *United Gas Pipeline Co.* v. *Memphis Light, Gas and Water Division*,[12] the Supreme Court held that the *Mobile-Sierra* public interest standard of review does not apply to service agreements entered into pursuant to the "tariff-and-service agreement" system used by natural gas pipelines. That system is currently implemented through section 154.110 of the Commission's regulations,[13] which requires interstate pipelines to include in their tariffs *pro forma* service agreements. Since *Memphis*, the Commission and the industry as a whole have consistently interpreted pipeline forms of service agreements as permitting changes in pipelines' tariff and service agreements to be made pursuant to the just and reasonable standard of review, rather than the public interest standard of review. This is true whether the change is initiated by the pipeline under section 4 of the NGA or by a shipper or the Commission under section 5.[14]

6. In the electric industry, Order No. 888 adopted a "tariff and service agreement" contracting system for open access electric transmission service very similar to the system used by interstate pipelines for their open access transportation service. Thus, as is the case with natural gas pipeline service agreements, when an electric transmission provider negotiates a service agreement with a customer, the issue of what standard of review the Commission will apply when acting on proposed tariff or contract modifications is generally not a matter for negotiation between the parties. The just and reasonable standard of review must apply, since it is provided for in the OATT and in the mandatory form of service agreement in the Transmission Provider's tariff.[15]

III. Discussion

7. A great deal of time and expense is incurred, and much uncertainty is engendered, when the parties involved in contract disputes and the Commission attempt to resolve the issues of whether the parties intended to invoke a public interest standard of review, and whether this standard binds only one party, both parties, third parties, and/or the Commission.

8. Moreover, courts have been divided as to whether to apply the public interest or the just and reasonable standard in the face of contractual silence. As the (First Circuit) court said in *Boston Edison*, "cases even within the D.C. Circuit * * * do not form a completely consistent pattern."[16] The *Boston Edison* court also stated that these issues would remain in a state of confusion until the Commission "squarely confronted the underlying issues," and if the Commission "wanted to eliminate much of the existing uncertainly regarding the parties" intent, it might prescribe prospectively the terms that parties would have to use to invoke Mobile-Sierra protection."[17]

9. Upon review of the case law, we conclude that the weight of precedent supports the conclusion that the public interest standard applies in the case of contractual silence. *See, e.g., Texaco Inc.* v. *FERC*, 148 F.3d 1091, 1096 (D.C. Cir. 1998) ("absent contractual language 'susceptible to the construction that the rate may be altered while the contract[] subsists,' the Mobile-Sierra doctrine applies," *quoting Appalachian Power Co.*, 529 F.2d 342, 348 (D.C. Cir. 1976)).[18] Moreover, we note that, in the initial cases, the Supreme Court interpreted silence as requiring the public interest standard of review. *See Sierra*, 350 U.S. at 355 ("while it may be that the Commission may not normally *impose* upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain").

10. Thus, rather than prescribe specific terms for invoking *Mobile-Sierra*, as suggested by Boston Edison, the Commission believes that, in keeping with precedent, recognizing the importance of providing certainty and stability in energy markets, and to promote the sanctity of contracts, it is

[4] 16 U.S.C. 824d; 15 U.S.C. 717c.

[5] *Id.*

[6] 16 U.S.C. 824e; 15 U.S.C. 717d.

[7] *See, e.g.*, 16 U.S.C. 824d(d) and 824e(a); 15 U.S.C. 717c(d) and 717d(a).

[8] Although this proposed rulemaking applies to rates, terms, and conditions, of both electric and gas contracts, most of the cases have involved rates.

[9] *See Boston Edison Co.* v. *FERC*, 233 F.3d 60 (1st Cir. 2000) (*Boston Edison*) (*citing Mobile-Sierra*).

[10] *See Northeast Utilities Service Co.*, 55 F.3d 686, 690 (1st Cir. 1995) (describing the *Mobile-Sierra* standard of review: "[N]owhere in the Supreme Court opinion is the term 'public interest' defined. Indeed, the Court seems to assume that the Commission decides what circumstances give rise to the public interest").

[11] *See Papago Tribal Utility Authority* v. *FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983).

[12] 358 U.S. 103 (1958) (*Memphis*).

[13] 18 CFR 154.110.

[14] There are two primary situations where the form of service agreement set forth in the pipeline's tariff does not apply. First, when a project is being certificated, the pipeline generally negotiates precedent agreements with the shippers (and there is no form of service agreement for precedent agreements). The second situation is the negotiation of rate case settlements.

[15] However, also similar to the situation with natural gas pipelines, transmission providers may enter into rate case settlements with their customers that are not covered by the form of service agreement, and such settlement agreements may contain provisions limiting the parties' section 205 and 206 rights in particular ways.

[16] *Boston Edison*, 233 F.3d at 67.

[17] *Boston Edison*, 233 F.3d at 68.

[18] *But see Union Pac. Fuels, Inc.* v. *FERC*, 327 U.S. App. D.C. 74, 129 F.3d 157, 161–162 (D.C. Cir. 1997).

preferable to interpret contractual silence on this issue as the intent to invoke a *Mobile-Sierra* standard of review. Stated differently, parties seeking to reserve the contractual right to seek modification under a just and reasonable standard of review must do so clearly and explicitly. Accordingly, we propose to prescribe terms parties must use to evidence an intent to have the Commission review modifications to jurisdictional agreements that are not agreed to by the signatories (or their successors) under the just and reasonable standard. In the absence of such prescribed language, we propose to review modifications to jurisdictional agreements that are not agreed to by all signatories (or their successors) under the public interest standard. New agreements and modifications to jurisdictional agreements that are agreed to by all signatories (or their successors), however, will continue to be reviewed under the just and reasonable standard. As we have explained with regard to the former,[19] we are not bound to employ a public interest standard of review when we undertake our initial review of an agreement.[20]

IV. Information Collection Statement

11. The Commission is not imposing an information collection requirement upon the public. Therefore, this proposed rule is not subject to review by the Office of Management and Budget.

V. Environmental Analysis

12. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[21] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR pursuant to § 380.4(a)(2)(ii) of the Commission regulations, which provides a "categorical exclusion" for rules that do not substantively change the effect of legislation.[22]

[19] *See, e.g., ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 77, *reh'g denied*, 104 FERC ¶ 61,033 (2003); *Florida Power & Light Co.*, 67 FERC ¶ 61,141 at 61,398–99 (1994); *Southern Company Services, Inc.*, 67 FERC ¶ 61,080 (1994).

[20] *See also Northeast Utilities Service Co.*, 993 F.2d 937 at 961 (1st Cir. 1993).

[21] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[22] 18 CFR 380.4(a)(2)(ii).

VI. Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980 (RFA)[23] requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define "significant" or "substantial" instead leaving it up to an agency to determine the impact of its regulations on small entities.

14. In drafting this rule, the Commission has followed the provisions of both the RFA and the Paperwork Reduction Act to consider the potential impact of regulations on small business and other small entities. The cost of compliance with the rule proposed herein, if finalized, will be minimal. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies the rule proposed herein, if finalized, will not have a "significant economic impact on a substantial number of small entities."

VII. Comment Procedures

15. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 3, 2006. Comments must refer to Docket No. RM05–35–000, and must include the commenter's name, the organization represented, if applicable, and the commenter's address. Comments may be filed either in electronic or paper format.

16. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and fourteen (14) copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

17. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

[23] 5 U.S.C. 601–12.

VIII. Document Availability

18. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

19. From the Commission's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

20. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 370

Electric power; Natural gas; Pipelines.

By direction of the Commission.

Commissioner Kelly dissenting with a separate statement attached.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7252.

§ 35.1 [Amended]

2. In § 35.1, paragraph (d) is removed, and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f).

3. Subchapter V, consisting of part 370, is added to read as follows:

Subchapter V—Standard of Review

PART 370—STANDARD OF REVIEW FOR MODIFICATIONS TO JURISDICTIONAL AGREEMENTS

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7252.

§ 370.1 Applicability.

(a)(1) The provisions of this paragraph shall apply to all Commission-jurisdictional agreements under the Federal Power Act executed on or after ____, except for transmission service agreements under an open access transmission tariff as provided for under Order No. 888. If contracting parties intend to permit the Commission, either on its own motion or upon complaint under section 206 of the Federal Power Act, to modify a previously executed agreement under the "just and reasonable" standard of review, rather than the "public interest" standard of review, the agreement shall contain the following language:

The standard of review the Commission shall apply when acting on proposed modifications to this agreement, either on the Commission's own motion or on behalf of a signatory or a non-signatory, shall be the "just and reasonable" standard of review rather than the "public interest" standard of review.

(2) If the agreement does not contain the aforementioned language, the Commission shall review proposed modifications to a previously executed agreement that are not agreed to by the signatories (or their successors) under the "public interest" standard of review rather than the "just and reasonable" standard of review.

(b)(1) The provisions of this paragraph shall apply to all Commission-jurisdictional agreements under the Natural Gas Act executed on or after ____, except for transportation agreements executed pursuant to the pro forma form of service agreement contained in the interstate pipeline's tariff pursuant to § 154.110 of this chapter. If contracting parties intend to permit the Commission, either on its own motion or upon complaint under section 5 of the Natural Gas Act, to modify a previously executed agreement under the "just and reasonable" standard of review, rather than the "public interest" standard of review, the agreement shall contain the following language:

The standard of review the Commission shall apply when acting on proposed modifications to this agreement, either on the Commission's own motion or on behalf of a signatory or a non-signatory, shall be the "just and reasonable" standard of review rather than the "public interest" standard of review.

(2) If the agreement does not contain the aforementioned language, the Commission shall review proposed modifications to a previously executed agreement that are not agreed to by the signatories (or their successors) under the "public interest" standard of review rather than the "just and reasonable" standard of review.

Editorial Note: The following statement of dissent will not appear in the Code of Federal Regulations.

KELLY, Commissioner, *dissenting:*

In this NOPR, the Commission proposes to bind itself to the "public interest" standard of review, pursuant to the *Mobile-Sierra* doctrine, when acting under FPA section 206 or NGA section 5, unless parties include language allowing the Commission to apply the "just and reasonable" standard specified by the statutes. This proposal is an abdication of the statutory authority and obligations entrusted to the Commission by Congress and is contrary to the will of Congress. In addition, this proposed regulation is not compelled by court or Commission precedent and it will not achieve the stated goal of "providing certainty and stability in energy markets." [1] On the contrary, in order to foster certainty and stability, the Commission should apply the same "just and reasonable" standard of review to these jurisdictional agreements that the Commission proposes to retain with respect to electric transmission and gas transportation service agreements. Therefore, I dissent from this NOPR.

I. Abdication of the Commission's Statutory Authority

The Federal Power Act and the Natural Gas Act clearly direct the Commission to follow the "just and reasonable" standard when acting under FPA section 206 or NGA section 5. Section 206(a) of the FPA provides that, whenever the Commission may find an "unjust, unreasonable, unduly discriminatory or preferential" rate or contract, it "shall fix the same by order." [2] Section 5 of the Natural Gas Act grants the Commission similar authority in the gas field. These provisions are essential to carrying out the Commission's obligations and must not be effectively read out of the statutes as the Commission proposes to do here.

In spite of Congress's clear directive that the Commission use a "just and reasonable" standard of review, the Commission proposes in this NOPR to eschew such a review and instead follow a stricter *Mobile-Sierra* "public interest" standard unless contracting parties specify that they intend to permit the Commission to act under the "just and reasonable" standard.[3] Thus, with this NOPR, the Commission proposes to abdicate its statutory obligation to review rates, terms and conditions under the just and reasonable standards of the FPA and NGA.

Parties can bargain away by contract their statutory rights to Commission review of future rate changes under the "just and reasonable" standard. However, the NOPR goes far beyond this well-established principle. First, under this NOPR, the Commission presumes that the parties intended the *Mobile-Sierra* "public interest" standard to apply even when the contract is silent as to the parties' intent. Second, the Commission would apply this imputed *Mobile-Sierra* "public interest" standard in FPA section 206 or NGA section 5 proceedings initiated by the Commission acting on its own motion, or on behalf of a party or a third party. When a jurisdictional contract is unclear as to what the parties intended, I believe the default standard should be that which is contained in the governing statute. I also do not believe that the Commission should bind itself to a *Mobile-Sierra* public interest standard of review, which some courts have described as "practically insurmountable," where the Commission is acting on its own motion or on behalf of third parties. As the D.C. Circuit recently held in *Atlantic City*, a case in which the court struck down Commission action denying jurisdictional utilities their FPA section 205 filing rights, the Commission may not take away rights expressly granted by statute.[4] With its action today, the Commission proposes to do just that.

II. Court and Commission Precedent Do Not Require This Proposed Action

The NOPR states that the Commission acts today, in part, at the suggestion of

[1] NOPR at P 10.

[2] 16 U.S.C. 824e(a) (2000).

[3] The Ninth Circuit Court of Appeals is currently reviewing Commission orders involving standard of review issues within the context of complaints seeking modification of long-term contracts executed during the Western energy crisis in 2000–2001. *See Public Utility District No. 1 of Snohomish County, Washington, et al.* v. *FERC*, 9th Cir. Nos. 03–72511, *et al.* and *Public Utilities Commission of the State of California, et al.* v. *FERC*, 9th Cir. Nos. 03–74207, *et al.*

[4] *See Atlantic City Elec. Co.* v. *FERC*, 295 F.3d 1, 9–10 (D.C. Cir. 2002).

the First Circuit in *Boston Edison*[5] to eliminate uncertainty regarding whether the *Mobile-Sierra* "public interest" or the "just and reasonable" standard applies in the face of contractual silence.[6] Specifically, the court in *Boston Edison* suggested that the Commission prescribe prospectively the terms that parties would have to use to invoke the "public interest" standard. That is not what the Commission has done here. Instead of telling contracting parties what language they can use to invoke the "public interest" standard, the Commission provides that the parties need take no action, nor use any language, to invoke that standard. Under the NOPR, the "public interest" standard will be available at all times, in all circumstances, when the contract is silent. Thus, a "public interest" standard becomes the default standard, and the Commission prescribes terms that parties must include in their contract to keep their statutory right to a "just and reasonable" standard. This turns the statute on its head.

In addition, the NOPR does not explain that the *Boston Edison* court went on to opine that "FERC has reasonably broad powers to regulate the substantive terms of filings that it accepts and allows to become effective," which may "include the power to require prospectively, by regulation that all contracts set their rates subject to FERC's just and reasonable standard."[7] That is the action that the Commission should be proposing today.

The Commission erroneously relies on the initial *Mobile*[8] and *Sierra*[9] cases as support for its proposal to default to the *Mobile-Sierra* "public interest" standard in FPA section 206 or NGA section 5 proceedings. The NOPR states that these cases stand for the proposition that the Supreme Court interpreted contractual silence as requiring the "public interest" standard of review. The implication is that the Court requires a "public interest" standard of review in FPA section 206 and NGA section 5 proceedings initiated by a buyer or the Commission. That is not the case. *Mobile* and *Sierra* involved what standard of review should apply when regulated sellers with contracts already on file with the Commission attempted to unilaterally raise the contractual rate by filing for a new rate under section 205 and section 4 and showing that the new rate was just and reasonable. These cases did not involve what standard of review should apply when a buyer or the Commission challenges the rate on file as unjust and unreasonable under FPA section 206 or NGA section 5. Here, the Commission proposes to bind itself to the stricter *Mobile-Sierra* "public interest" standard of review when acting under section 206 or section 5 where parties are silent as to the applicable standard of review. *Mobile* and *Sierra* do not support this proposed action.

The proposed regulation also departs abruptly from the Commission's precedent on what standard of review applies when the Commission acts *sua sponte* or on behalf of non-parties.[10] Yet the NOPR relies on this same precedent to support its assertion that the Commission is not bound to employ a "public interest" standard of review when the Commission undertakes an initial review of an agreement.[11]

III. Certainty and Stability in Energy Markets

I disagree with the NOPR's assertion that the proposed regulation will provide certainty and stability in energy markets. Adopting a *Mobile-Sierra* "public interest" standard as the new default standard of review in section 206 and section 5 proceedings with respect to these jurisdictional agreements will inject uncertainty and instability into the industries. As the NOPR recognizes, the "public interest" standard of review is not clearly defined. Courts have variably described this standard as "practically insurmountable"[12] and as not being "considered 'practically insurmountable' in all circumstances."[13] The First Circuit has opined that "[i]t all depends on whose ox is gored and how the public interest is affected."[14] Adoption of a new, default "public interest" standard of review opens the door to uncertainty and extensive future litigation to resolve its meaning.

To achieve the goal of certainty and stability in energy markets, the Commission should act to preserve the application of the statutory "just and reasonable" standard of review as the default when the parties' intent is unspecified or unclear. The "just and reasonable" standard has been used extensively over the last 70 years to review rates, terms and conditions in both the electricity and gas industries. It is well-known and well-defined. It has guided contracting in these industries for the life of them. It has provided a clear benchmark against which to draft a contract and craft performance of that contract. There is no evidence that this standard has been a problem for contracting parties, or for the industries themselves. There is no evidence that this standard has been a hindrance to contract sanctity. In fact, this NOPR acknowledges as much by proposing to continue to apply the "just and reasonable" standard to electric transmission and gas transportation service agreements. Certainty and stability in the electric and gas industries will only be fostered by consistent regulation.

Accordingly, for the reasons discussed above, I respectfully dissent.

Suedeen G. Kelly

[FR Doc. E5–8217 Filed 1–3–06; 8:45 am]
BILLING CODE 6717–01–P

[5] *Boston Edison Co.* v. *FERC*, 233 F.3d 60 (1st Cir. 2000).

[6] The *Boston Edison* court noted that even cases within the D.C. Circuit "do not form a completely consistent pattern." *Id.* at 67, citing *Texaco Inc.* v. *FERC*, 148 F.3d 1091, 1096 (D.C. Cir. 1998) and *Union Pacific Fuels, Inc.* v. *FERC*, 129 F.3d 157, 161–62 (D.C. Cir. 1997) (where the D.C. Circuit, faced with contracts in which parties did not expressly state what standard of review would apply to rate changes initiated by the Commission held in the former case that the Commission could only modify the contract under a "public interest" standard but, in the latter case, that the Commission could apply a "just and reasonable" standard).

[7] *Boston Edison*, 233 F.3d at 68.

[8] *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956).

[9] *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[10] *See ITC Holdings Corp.*, 102 FERC ¶ 61,182 (2003); *Southern Company Services*, 67 FERC ¶ 61,080 (1994); and *Florida Power & Light Co.*, 67 FERC ¶ 61,141 (1994).

[11] *See* NOPR at P 10 & n. 19.

[12] *Papago Tribal Util. Auth.* v. *FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983), cert. denied, 467 U.S. 1241 (1984).

[13] *Northeast Utils. Serv. Co.*, 55 F.3d 686, 692 (1st Cir. 1995). *See also Potomac Electric Power Co.* v. *FERC*, 210 F.3d 403, 408 (D.C. Cir. 2000) (court concurring with the First Circuit's finding that when acting *sua sponte* or at the request of a third party to change rates, the Commission is not bound to a standard of review that is "practically insurmountable").

[14] 55 F.3d at 691.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AC43

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service is proposing a technical change to the transition language contained in the 2005 planning rule (70 FR 1023; Jan. 5, 2005). The current transition language

requires plan revisions initiated after January 5, 2005, to conform to the requirements in the 2005 planning rule. In response to a court order affecting only the Tongass National Forest, the proposed amendment would allow the Tongass National Forest to revise its land management plan to address the errors identified by the court either under the 2005 Rule or the planning regulations in effect before November 9, 2000.

DATES: Comments must be received in writing by February 3, 2006. Comments received after this date may be considered and placed in the record at the discretion of the Forest Service.

ADDRESSES: Send written comments to: USDA FS Planning Rule Technical Amendment, P.O. Box 21628, Juneau, AK 99802–1628, Attn: Cherie Shelley; via e-mail to *planning_rule_technical_amendment@fs.fed.us;* or by facsimile to Planning Rule Technical Amendment Comments at (907) 586–7852. Comments also may be submitted by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov*. If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via regular mail. Please confine comments to issues pertinent to the proposed rule, explain the reasons for any recommended changes and, where possible, reference the specific wording being addressed. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments. Persons wishing to inspect the comments need to call (907) 586–8886 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: Cherie Shelley, Director, Ecosystem Planning, Alaska Region, Forest Service, USDA at (907) 586–8887, or Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA at (202) 205–1019.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2005, the Department of Agriculture published a final planning rule (70 FR 1023) governing the development of land management plans required by the National Forest Management Act. The 2005 planning regulations provide for a transition period from the previous planning regulations (1982 planning rule) to the new regulations (2005 planning rule). Specifically, § 219.14 of the 2005 planning rule allows plans to be amended under either the 1982 planning rule or the 2005 planning rule during the transition period; however, newly initiated revisions may only use the 2005 planning rule.

One of the differences between the 1982 planning rule and the 2005 planning rule is that the former required the development of an environmental impact statement (EIS) as part of the process to revise a land management plan. On August 5, 2005, the Ninth Circuit Court of Appeals issued a decision in *Natural Resources Defense Council* v. *U.S. Forest Service*, 421 F.3d 797, that found errors in the 1997 Final EIS and Record of Decision for the Tongass Land Management Plan. In its decision, the court made several statements indicating its intent that the Forest Service prepare a new EIS for a plan revision addressing the errors identified by the court. For this unique situation, this proposed rule will allow the Tongass National Forest to use the 1982 planning rule to revise its plan to meet the expectations of the U.S. Court of Appeals for the Ninth Circuit.

The Forest Service is seeking public comment on this proposed rule to amend 36 CFR 219.14(d)(1) to allow the Tongass National Forest to use either the 1982 planning rule or the 2005 planning rule for its next revision addressing the court's order.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to Office of Management and Budget review under Executive Order 12866.

Proper Consideration of Small Entities

This proposed rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The proposed rule would make a technical amendment to the transition language of the 2005 planning rule, to allow the Tongass National Forest to use either the current planning regulations or the regulations in effect before November 9, 2000 for its next land management plan revision. An initial small entities flexibility assessment has been made, which indicates that the proposed rule will impose no additional requirements on the affected public, which includes small businesses, small not-for-profit organizations, or small units of government. Accordingly, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

No Environmental Impact

This proposed rule would allow the Tongass National Forest to use either the existing planning regulations or the planning regulations in effect before November 9, 2000 for the next revision of its land management plan to respond to the court's order. As such, the proposed rule has no direct and immediate effects regarding the occupancy and actual use of the Tongass National Forest. Section 31.12 (2) of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." The 2005 planning regulations are a Service-wide program process. The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this rule does not constitute a significant energy action as defined in the Executive order. Procedural in nature, this proposed rule would allow the Tongass National Forest to use either the regulations currently in place or the planning regulations in effect before November 9, 2000 for the next revision of its land management plan to respond to the court's order. This plan is a programmatic document that provides guidance and information for future project-level resource management

decisions. The revised plan may designate major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of such designations on energy supply, distribution, or use will be considered at the time such designations are proposed.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism. The agency has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive orders; would not impose any compliance costs on the States; and 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. Based on comments received on this proposed rule, the agency will determine if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation With Tribal Governments

This proposed rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of private property. This proposed rule only allows the Tongass National Forest to use either the existing planning regulations or the regulations in effect before November 9, 2000 for its next plan revision.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict was identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the parties to use administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, Forest and forest products, National forests, Natural resources, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend subpart A of part 219 of title 36 of the Code of Federal Regulations as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

2. Amend § 219.14 by revising paragraph (d)(1) to read as follows:

§ 219.14 Effective dates and transition.

* * * * *

(d)(1) Plan development and plan revisions initiated after January 5, 2005 must conform to the requirements of this subpart, except that the plan for the Tongass National Forest may be revised once under this subpart or the planning regulations in effect before November 9, 2000.

* * * * *

Dated: December 16, 2005.

Dale N. Bosworth,

Chief, USDA Forest Service.

[FR Doc. E5–8245 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1604

Accident Investigation Initiation Notice and Order To Preserve Evidence

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Proposed rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) proposes the adoption of the following regulation that is intended to notify the owner and/or operator of a facility that suffers an accidental release as defined by the Clean Air Act Amendments of 1990, (also referred to here as a chemical "accident" or "incident"), that the CSB intends to deploy investigators to its facility, and that relevant evidence must be preserved. Under this regulation, site control would remain the responsibility of the owner and/or operator of the affected facility. However, owners/operators are required by this regulation to exercise care to ensure that the accident scene and relevant evidence found therein is adequately protected from alteration.

DATES: Written comments must be received on or before February 3, 2005.

ADDRESSES: You may submit written comments concerning this proposed rule, by the following method:

- Mail/Express delivery service: Chemical Safety and Hazard Investigation Board, Office of General Counsel, Attn: Christopher Warner, 2175 K Street, NW., Suite 650, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Christopher Warner, 202–261–7600.

SUPPLEMENTARY INFORMATION: Preserving physical evidence at an accident scene is an important component in all manner of investigations. In a chemical accident investigation, securing an accident scene and preserving the integrity of the evidence contained therein is critical, especially where significant explosions or fires have destroyed some or much of the relevant physical evidence at the accident site. According to one good-practice guideline on chemical accident

investigation, securing the scene in order to preserve evidence is the first priority of an investigator after all first responder responsibilities are met (*i.e.*, to rescue victims and provide them with medical treatment, stabilize and secure the accident scene, and address imminent environmental concerns in accordance with controlling law). See, generally, Guidelines for Investigating Chemical Process Incidents, Center for Chemical Process Safety of the American Institute of Chemical Engineers, pp. 108–109, 115–122 (2nd ed. 2003), available in bookstores, libraries, and directly from CCPS at 3 Park Avenue, New York, NY 10016, or *http://www.aiche.org/ccps*.

The CSB's enabling statute provides the CSB with broad authority to establish any regulations needed to meet the requirements of its investigative mission. Specifically, the Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. In addition to this broad statutory authority, the legislative history accompanying the CSB's enabling statute lists "five enumerated duties" for the Board, the third of which includes the duty to establish measures to preserve evidence which may substantiate the cause or probable cause of an accident. Pertinent legislative history also provides that Board regulations shall provide for the preservation of evidence at the site of the accident so that the Board may properly conduct an investigation to determine the cause or probable cause when its representatives arrive at the site of the accident. Moreover, Congress specifically intended that the CSB be empowered to regulate the activities of other parties during accident investigations undertaken by the CSB.

Through this proposed regulation, the CSB intends to establish the means by which it will preserve accident scenes/sites, and the evidence within those sites. The CSB proposes a procedure by which it may issue a written "Notice of Accident Investigation Initiation and Order to Preserve Evidence." The Notice shall identify the CSB's Investigator-in-Charge (IIC), provide contact information, and an official investigation number. The Notice shall also specify that the owner/operator continues to be responsible for the security and protection of its own site, including any real or personal property located therein, and that the owner/operator continues to be responsible for the protection of the life, health, and safety of its employees or any other people affected by the accident under investigation, as well as compliance with all federal, state, or local laws. Last, the Notice shall specifically inform the owner/operator of its legal obligation to preserve the accident site, to the maximum extent possible, in its original, post-accident state, and to preserve any evidence at the site that is or might reasonably be relevant to the CSB's investigation.

The CSB recognizes that emergency response and mitigation activities will take precedence over the preservation of evidence and anticipates that most emergency response activities will be concluded prior to the issuance of a Notice under this rule. This rule is not intended to interfere in any manner with critical first response activities—the rescue of victims and necessary steps to address immediate public health and environmental concerns in accordance with controlling law. The rule defines such emergency response activities as "qualifying emergencies." In the event that an owner/operator anticipates changing or modifying the site or any evidence following the issuance of a Notice, the owner/operator would be required to contact the CSB and, if advance notice to the CSB is not possible, to document the condition of the site.

The CSB is aware that there may be multiple Federal, state, and local agencies responding to an incident and each agency will have specific authorities and responsibilities. The regulation specifically states that it "shall not be interpreted to abrogate or supersede any other Federal, State, or local agencies' ability to provide emergency response or to perform their duties arising under law."

The CSB coordinates its field investigative activities with other parties in accordance with the National Incident Management System and through memoranda of understanding with specific agencies. The CSB has Memoranda of Understanding with ATF, OSHA, EPA, NIST, and the NTSB which set out procedures for dealing with site specific issues. The CSB also works with owners/operators and other governmental responders to enter into site-specific evidence preservation agreements. Where such voluntary agreements can be entered into quickly and in a manner that does not compromise the CSB's investigation, a Notice under this rule may not be necessary, or if one is issued, it may be rescinded upon execution of such an agreement.

This regulation does not address specific issues that may arise between Federal, State, and local agencies regarding custody of or testing of evidence in specific investigations. Such issues are worked out on a case-by-case basis with interested parties. The CSB, therefore, proposes the following rule to address critical issues surrounding evidence preservation in order that CSB investigators have the fullest possible opportunity to determine the causes of chemical accidents to which they are deployed. The CSB invites comments on these proposed regulations.

Regulatory Impact

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on such small entities. This analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this proposed rule under the Regulatory Flexibility Act. The CSB's General Counsel, Christopher W. Warner, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

We reviewed this rule to determine whether it invokes issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by the CSB, the Act, 44 U.S.C. 3518(c), exempts collections of information that occur "during the conduct of * * * an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry." The rule adopted below comes squarely within this exemption, as it deals entirely with administrative investigations and actions involving specific individuals or entities. Therefore, we have determined that the PRA does not apply to this rule.

Unfunded Mandates Reform Act of 1995

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may

result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($123 million in 2005, adjusted annually for inflation).

List of Subjects in 40 CFR Part 1604

Administrative practice and procedure, Investigations.

Dated: December 27, 2005.

Raymond C. Porfiri,

Deputy General Counsel.

Accordingly, for the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to add a new 40 CFR part 1604 to read as follows:

PART 1604—NOTICE OF ACCIDENT INVESTIGATION INITIATION AND ORDER TO PRESERVE EVIDENCE

Sec.

Authority: 42 U.S.C. 7412(r)(6)(N).

§ 1604.1 Purpose and Scope of Regulations.

The purpose of this regulation is to provide for the preservation of evidence at the site of an accidental release so that the Chemical Safety and Hazard Investigation Board (CSB) may conduct a full investigation to determine the cause or probable cause of a release. This regulation applies only to an accidental release to which the CSB deploys or intends to deploy investigators as part of a Field Investigation Team or Preliminary Assessment Team, and only where the owner and/or operator of the facility that suffered an accidental release receives a "Notice of Accident Investigation Initiation and Order to Preserve Evidence," as outlined in this rule.

§ 1604.2 Definitions.

Accidental Release refers to an unanticipated emission of a substance regulated under 42 U.S.C. 7412, or other extremely hazardous substance into the ambient air from a stationary source resulting in a fatality, serious injury, or substantial property damages.

Field Investigation Team refers to one or more CSB personnel, in the possession of appropriate credentials and a Notice of Inspection Authority, and led by a designated CSB Investigator-in-Charge (IIC), who has been authorized by the CSB to investigate an accidental release.

Preliminary Assessment Team refers to one or more CSB personnel, in the possession of appropriate credentials and a Notice of Inspection Authority, and led by a designated IIC, that has been tasked by the CSB to make a preliminary factual analysis of an accidental release in order that the CSB can make an informed decision as to whether or not the CSB will undertake an investigation of an incident.

Qualifying emergency refers to genuine emergency situations or circumstances that include:

(1) Removing persons injured or trapped and obtaining for them needed medical attention or removing the remains of deceased persons;

(2) Extinguishing fires;

(3) Stabilizing an accident scene to the extent necessary to protect the facility from further imminent damage;

(3) Protecting workers or the public from additional releases or other potential source(s) of injury;

(4) Complying with any Federal, State, or local environmental laws requiring an immediate response (including but not limited to immediate accident reporting, clean up of any pollutants or hazardous substances, mitigation, etc.); and

(5) Taking any other actions required to meet the lawful obligations imposed by any other Federal, State, or local laws.

Preserve an accident site or scene refers to the obligation of a facility owner and/or operator to maintain and keep intact the status quo with respect to the site (or scene) of an accidental release, including but not limited to the part of the facility in which a chemical accident occurred, as well as the area immediately adjacent to the site of the accident. The "accident site or scene" portion of this definition must necessarily be flexible, and is to be determined based on an analysis of the totality of the circumstances. An accident site or scene could therefore be small, such as an accident that occurred indoors and is limited to a single room. Conversely, an accident site or scene could be quite large, such as when debris and other relevant evidence is scattered over a wide area following an explosion. This obligation necessarily includes but is not limited to the notification requirements in § 1604.3(g).

Protect any relevant evidence refers to the obligation of a facility owner and/or operator to ensure that any evidence within an accident site or scene is not tampered with, moved, or in any other way altered or changed, and the status and integrity of the evidence is protected from post-accident human intervention. This obligation extends to any personnel working for or on behalf of the owner/operator. It also includes taking reasonable steps to protect any such evidence from third party intervention through appropriate security and/or other site control measures. The "relevant evidence" portion of this definition includes any structures, artifacts, machine(s), device(s), apparatus(es), process(es), control(s), equipment, sample(s), substance(s), and/or any other physical objects or documents that a reasonable person would believe might help establish the cause or causes of the accident under investigation. This obligation necessarily includes but is not limited to the notification requirements in § 1604.3(g).

§ 1604.3 Procedures.

(a) After a decision has been made by the CSB to deploy investigators to the site or scene of an accidental release, the CSB IIC designated to lead any type of CSB team at a particular accident scene may issue a Notice of Accident Investigation Initiation and Order to Preserve to the owner and/or operator of the facility that suffered the accident. Such a notice shall be issued whenever an IIC has determined that physical evidence at the site is in danger of being removed, altered, or tampered with. The Notice shall identify the IIC by name, and it shall also provide appropriate contact information, an official investigation number, and an estimate of when CSB personnel will arrive at the scene, if they have not already arrived. The Notice shall also specify that the owner/operator continues to be responsible for the security and protection of its own site, and any real or personal property located therein, and that nothing in this regulation or any subsequent site control agreement that might be entered into relieves the owner/operator of its obligations under law to protect the life, health, and safety of its employees or any other people affected by the accident under investigation, or any of its other obligations under any other federal, state, or local law.

(b) In the same Notice, the IIC shall further inform the owner and/or operator that the owner/operator is required to preserve the accident site or scene, and that the owner/operator must protect any relevant evidence therein which may assist the CSB in determining the cause or causes of the accidental release, subject to the provisions of paragraphs (c) and (d) of this section. Special attention should be given to preserve records; files; papers; electronic records; processes; controls; facilities; and samples of substances,

physical objects, or any documents believed to be involved in the accident, or in any way relevant to the accident and/or the CSB investigation. With respect to records of any type, the Notice shall specify that an owner/operator is required to preserve relevant records that may be stored at a different location. The Notice will also indicate that such items shall also be made readily available to CSB personnel at the first reasonable opportunity.

(c) Upon receipt of a Notice of Accident Investigation Initiation and Order to Preserve signed by a CSB IIC, an owner and/or operator must acknowledge receipt in writing and post a copy of the Notice of Accident Investigation Initiation and Order to Preserve in a conspicuous place such as in the immediate area of, adjacent to, or at the entrance to, the machine(s), device(s), apparatus(es), process(es), control(s), equipment, sample(s), or substance(s) and any other physical objects or documents that are believed to be relevant in determining the cause(s) of the accident. An owner/operator should post additional copies of the notice at different areas of the scene if that would aid site preservation. In addition, the owner and/or operator must comply with the Order to the maximum extent possible, and must refrain from any activity that would affect the accident scene/site, or potential evidence contained therein, except to the extent necessary to respond to a qualifying emergency as defined in § 1604.2.

(d) When it appears it will become necessary to disturb an accident scene/site or any evidence contained therein in any way prior to the arrival of CSB personnel due to the existence of a qualifying emergency, the owner or operator of the facility shall notify the CSB as soon as possible of the existence of a qualifying emergency and allow the CSB the opportunity to: (1) Comment on the nature and extent of proposed alteration to the evidence or scene/site; (2) attempt to document the evidence/site through appropriate means, as quickly as possible, including through the use of a third party; or (3) seek other appropriate actions, including but not limited to an emergency court order in federal court to prohibit the proposed alteration to the evidence/site.

(e) If advance notice to the CSB is not possible under the circumstances prior to the alteration of the accident site or evidence due to existence of a qualifying emergency, post-action written notice must be given to the CSB as soon as possible after the alteration, which must include the following: (1) A complete explanation as to why advance notice could not be provided to the CSB prior to altering the evidence/site; (2) a complete description of all actions taken, and by whom, to rectify the emergency; (3) a chronological timeline of events that includes all actions from the original accidental release through the termination of responsive activities required by the qualifying emergency; and (4) photographic or video evidence, and any other documentation (i.e., descriptive notes, sketches, or other such documentation) indicating the original position and condition of any evidence which had to be moved or altered, as well as any changes to the accident site itself.

(f) A Notice of Accident Investigation Initiation and Order to Preserve shall remain in effect until the owner and/or operator of the facility in question receives written notice from the IIC or other CSB official designated by the Chairperson that the original Order to Preserve has been rescinded. A signed site control agreement does not negate or otherwise nullify a previously-issued Notice of Accident Investigation Initiation and Order to Preserve unless such agreement contains a specific provision rescinding that Order.

(g) This regulation shall not be interpreted to mean that the CSB is authorized to bar any party from entering an accident site to pursue their own independent investigation when that party is authorized by relevant law to enter the site and conduct an investigation. However, owners and/or operators of facilities that have suffered an accidental release, upon receipt of a CSB Notice of Accident Investigation Initiation and Order to Preserve, shall ensure that its employees, its contractors, and any third parties that might seek access to the owner's and/or operator's property, wherever it may be located, have been provided a copy of the Notice of Accident Investigation Initiation and Order to Preserve.

(h) This regulation shall not be interpreted to abrogate or supersede the designation of the National Transportation Safety Board as the lead agency with respect to chemical accidents in the transportation sector, pursuant to 49 U.S.C. 1101 et seq.

(i) This regulation shall not be interpreted to abrogate or supersede any other Federal, State, or local agencies' ability to provide emergency response or to perform their duties arising under law. In most instances, the actions taken by emergency responders should not conflict with the requirement to preserve relevant evidence. In the event that the owner and/or operator of a facility determines that preserving an accident scene or protecting relevant evidence under this rule is incompatible with the lawful demands of other governmental responders, the owner/operator must provide notice to the CSB under paragraph (d) of this section prior to altering the scene so that the CSB may attempt to resolve the issue, or if advance notice is not possible, document the condition of the site as provided under paragraph (e) of this section.

§ 1604.4 Enforcement.

Upon a written showing by the IIC that relevant evidence may be altered or destroyed, the IIC may, with the concurrence of the General Counsel, immediately issue a subpoena for such evidence to the owner/operator of the facility. If a person disobeys a subpoena issued by the IIC under this section, the Attorney General, acting on behalf of the CSB, may bring a civil action in a district court of the United States to enforce the subpoena. Instances of any knowing failure to comply with these regulations and/or the express terms contained in any Notice sent out pursuant to these regulations may also be referred to the U.S. Department of Justice, a local United States Attorney, or any State's Attorney General, for investigation and possible enforcement under applicable Federal or State law.

[FR Doc. E5–8239 Filed 1–3–06; 8:45 am]
BILLING CODE 6350–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3209, Docket No. 02–106, RM–10416 and Docket No. 02–108, RM–10418]

Radio Broadcasting Services; Harrisville and Presque Isle, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses at the request of Petitioner Northern Paul Bunyan Radio Company its pending petitions for rulemaking to allot Channel 227A at Presque Isle, Michigan in MB Docket No. 02–106, RM–10416 and to allot Channel 226A at Harrisville, Michigan in MB Docket No. 02–108, RM–10418. *See* 67 FR 39933, published June 11, 2002. This document also dismisses a counterproposal filed by Northern Michigan Radio, Inc. which proposes *inter alia* to reallot Channel 223C1 from Atlanta, Michigan to Vanderbilt, Michigan, and conflicts with both the proposals for Presque Isle and Harrisville. The counterproposal is

defective because it proposes to allot Channel 282C3 at Atlanta, Michigan as a "backfill" replacement for the loss of the community's sole local transmission service. This document therefore terminates the proceedings in MB Docket Nos. 02–106 and 02–108.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–106 and 02–108, adopted December 14, 2005 and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Report and Order to Government Accountability Office, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) since this proposed rules are dismissed, herein.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E5–8252 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–3213; MB Docket No. 05–328; RM–10577]

Radio Broadcasting Services; Millerton, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comment on a petition filed by Jeraldine Anderson proposing the allotment of Channel 265A at Millerton, Oklahoma, as the community's first local aural transmission service. Channel 265A can be allotted to Millerton in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 265A at Millerton are 33–59–09 North Latitude and 95–00–48 West Longitude.

DATES: Comments must be filed on or before February 6, 2006, and reply comments on or before February 21, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve on Petitioner, as follows: Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–328, adopted December 14, 2005, and released December 16, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Millerton, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E5–8253 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; T&M Contracts for Commercial Items

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Proposed rule with request for comment.

SUMMARY: The Cost Accounting Standards (CAS) Board is proposing to revise the CAS by providing an exemption for time-and-materials (T&M) and labor-hour (LH) contracts for the acquisition of commercial items.

DATES: Comments upon this proposed rule must be in writing and must be received by March 6, 2006.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to *casb2@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–5105.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202–395–1062).

SUPPLEMENTARY INFORMATION:

A. Background

On July 29, 1996, the Board implemented the Federal Acquisition Reform Act (FARA) by promulgating an interim rule providing an exemption from CAS for contracts for the acquisition of commercial items that are firm fixed price and fixed price with economic price adjustment (except when the adjustment is made on the basis of actual costs). The Board's final rule was implemented on June 6, 1997. At the time the CAS Board implemented this exemption, FAR limited the permissible contract types for the acquisition of commercial items to firm fixed price and fixed price with economic price adjustment.

Section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, referred to as SARA) amended the Federal Acquisition Streamlining Act (FASA) to expressly authorize the use of time-and-materials (T&M) and labor-hour (LH) contracts for the acquisition of certain categories of commercial services under specified conditions. As part of the process to implement this amendment, the Federal Acquisition Regulation (FAR) Council published an Advance Notice of Proposed Rulemaking (ANRPM) in the **Federal Register** on September 20, 2004 (69 FR 56316) to amend the FAR. The ANPRM requested comments on the impact of applying CAS. Public comments were received from 23 respondents. Eight of those respondents provided comments on the impact of applying CAS. The comments focused on whether the statute requires an exemption from CAS and the value of applying CAS to T&M/LH contracts for commercial items.

The FAR Council reviewed the public comments and drafted a proposed rule to amend the FAR. Based on the methodology in the draft proposed FAR rule that will be used to price and reimburse T&M and LH contracts (summarized below), the CAS Board has determined that an exemption from CAS is appropriate:

Pricing. Under the provisions of SARA and the requirements of the draft proposed FAR rule, T&M and LH contracts for commercial items must be awarded on a competitive basis. In addition, the contracting officer is precluded from obtaining cost or pricing data in accordance with FAR 15.403–1(c)(3). Therefore, the application of CAS, from a pricing standpoint, is similar to a firm fixed-price contract awarded on the basis of competition without submission of certified cost or pricing data. Such firm-fixed price contracts are exempt from CAS under 48 CFR 9903.201–1(b)(6).

Reimbursement. In regards to cost reimbursement, the draft proposed FAR rule provides for the following:

- Reimbursement of direct labor will be on the basis of fixed labor rates in the contract schedule. The fixed labor rates will be established based on competition, since SARA requires award on a competitive basis.
- Reimbursement of indirect costs will be at a fixed amount established at the time of contract award. This fixed amount will be part of the price evaluation, and thus is part of the competitive award process.
- Materials. If the materials are a commercial item, reimbursement will be at price. If the materials are not a commercial item, reimbursement will be at actual cost.
- Other Direct Costs will be reimbursed on the basis of actual costs incurred. Reimbursement is limited to the specific cost elements listed in the contract.
- Subcontracts will be reimbursed at either (a) cost (to the extent the costs are incurred in accordance with the terms and conditions of the subcontract agreement and evidenced by actual payment) or (b) the fixed labor rates in the contract schedule (if specifically provided for in the contract).

Under the draft proposed FAR rule, direct labor and indirect costs are reimbursed on a fixed price basis. Thus, for LH contracts, all reimbursement is on a fixed price basis (based on the number of labor hours expended).

For T&M contracts, materials, other direct costs, and subcontract costs may be reimbursed at cost. The preamble to the draft proposed FAR rule indicates that (a) Most of the material costs are anticipated to be for commercial items reimbursed at price, (b) the material and other direct costs should be a minor portion of the total contract costs, and (c) subcontract costs are either reimbursed at cost or at the fixed labor rates in the contract schedule.

The Board has concluded that a CAS exemption is appropriate for both T&M and LH contracts for the following reasons:

(a) The pricing is based on adequate competition without the submission of cost data;

(b) For other than subcontracts, reimbursement based on actual cost is anticipated to be very limited;

(c) Reimbursement of subcontracts based on actual costs requires that the costs be (i) incurred in accordance with the terms and conditions of the subcontract agreement, and (ii) evidenced by actual payment; and

(d) Reimbursement of subcontracts on other than actual costs will be on a fixed price basis (based on the fixed labor rates in the contract schedule).

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined this rule is not significant under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this rule will not have a significant impact on a substantial number of small businesses because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this proposed rule. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Joshua B. Bolten,

Director.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. The authority citation for part 9903 is revised to read as follows

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422.

Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–1(b)(6) is revised to read as follows:

§ 9903.201–1 CAS Applicability.

* * * * *

(b) * * *

(6) Firm fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.

* * * * *

[FR Doc. E5–8237 Filed 1–3–06; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Northern Mexican Gartersnake as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the northern Mexican gartersnake, *Thamnophis eques megalops*, as threatened or endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act). The petitioners provided three listing scenarios for consideration by the Service: (1) Listing the United States population as a Distinct Population Segment (DPS); (2) listing the species throughout its range in the United States and Mexico based on its range-wide status; or (3) listing the species throughout its range in the U.S. and Mexico based on its status in the United States. We find the petition has presented substantial information that the northern Mexican gartersnake is a listable entity, and we find that the petition presents substantial scientific and commercial data indicating that listing may be warranted. Therefore, we are initiating a status review to determine if listing this species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species. Any determinations on critical habitat will be made if and when a listing action is initiated for this species.

DATES: The finding announced in this document was made on December 13, 2005. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by March 6, 2006.

ADDRESSES: Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, Arizona. The petition, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

If you wish to comment or provide information, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to: Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, Arizona.

2. You may hand-deliver written comments and information to our Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, Arizona.

3. You may fax your comments to 602–242–2513.

4. You may send your comments by electronic mail (e-mail) directly to the Service at *MexGsnake@fws.gov*, or to the Federal Rulemaking Portal at *http://www.regulations.gov*. Please include "Attn: northern Mexican gartersnake" in the beginning of your message, and do not use special characters or any form of encryption. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone 602–242–0210 and facsimile 602–242–2513).

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the northern Mexican gartersnake. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the northern Mexican gartersnake. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section).

Our practice is to make any comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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.

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of

information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

We do not conduct additional research at this point, nor do we subject the petition to rigorous critical review. Rather, as the Act and regulations contemplate, in coming to a 90-day finding, we accept the petitioner's sources and characterizations of the information unless we have specific information to the contrary.

Our finding considers whether the petition states a reasonable case for listing the species under the Act on its face. Thus, our finding expresses no view as to the ultimate issue of whether the species should be listed. We reach a conclusion on that issue only after a more thorough review of the status of the species. In that review, which will be completed on or by September 15, 2006, we will perform a rigorous, critical analysis of the best available scientific and commercial information, not just the information in the petition. We will ensure that the data used to make our determination as to the status of the species is consistent with the Act and Information Quality Act (44 U.S.C. 3516).

Petition

On December 19, 2003, we received a petition dated December 15, 2003; requesting that we list the northern Mexican gartersnake, *Thamnophis eques megalops*, as threatened or endangered, and that critical habitat be designated concurrently with the listing. The petition, submitted by the Center for Biological Diversity (hereinafter referred to as the petitioners), was clearly identified as a petition for a listing rule, and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline. We acknowledged the receipt of the petition in a letter to Mr. Noah Greenwald, dated March 1, 2004. In that letter, we also advised the petitioners that, due to funding constraints in fiscal year 2004, we would not be able to begin processing the petition in a timely manner.

On May 17, 2005, the petitioners filed a complaint for declaratory and injunctive relief, challenging our failure to issue a 90-day finding in response to the petition as required by U.S.C. 1533(b)(3)(A) and (B). In a stipulated settlement agreement, we agreed to submit a 90-day finding to the **Federal Register** by December 16, 2005, and if positive, complete a 12-month finding on or by September 15, 2006 [*Center for Biological Diversity* v. *Norton*, CV–05–341–TUC–CKJ (D. Ariz)]. The settlement agreement was signed and adopted by the District Court for the District of Arizona on August 22, 2005. This notice constitutes our 90-day finding for the petition to list the northern Mexican gartersnake as threatened or endangered, pursuant to the Court's order.

Biology and Distribution

The northern Mexican gartersnake may occur with other native gartersnake species and can be difficult to identify in the field. The northern Mexican gartersnake is a medium-sized member of the family Colubridae with a maximum known length of 112 centimeters (cm) [44 inches (in)]. It ranges in background color from olive to olive-brown to olive-gray. Three stripes run the length of the body, with a yellow stripe down the back that darkens toward the tail. The pale yellow to light-tan lateral stripes distinguish the northern Mexican gartersnake from other gartersnake species because a portion of the lateral stripe is found on the fourth scale row. Paired black spots extend along the dorsolateral fields. A light-colored crescent extends behind the corners of the mouth.

The northern Mexican gartersnake is one of ten subspecies currently recognized under *Thamnophis eques*, has the largest historical distribution of these subspecies, and is the only subspecies known to occur in the United States. Robert Kennicott first described this northern subspecies of Mexican gartersnake in 1860 as *Eutenia megalops* from the type locality of Tucson, Arizona (Rosen and Schwalbe 1988). In 1951, Dr. Hobart Smith renamed the subspecies with its current scientific name of *Thamnophis eques megalops* (Rosen and Schwalbe 1988). A summary of taxonomic history can be found in Rosen and Schwalbe (1988).

The historical distribution of northern Mexican gartersnake in the United States was constrained largely to Arizona and, to a lesser degree, New Mexico. There have been a number of inventory, monitoring, and/or survey efforts in the United States, most of which occurred in Arizona (which encompasses the vast majority of the historical distribution of northern Mexican gartersnakes in the United States). Fewer survey data were found in the literature for Mexico and New Mexico. In Arizona, the historical distribution once included the Santa Cruz, San Pedro, Colorado, Salt, Agua Fria, Rio Yaqui, and Verde River watersheds and presumably the Gila River watershed based on historically suitable habitat and geographic proximity to formerly extant populations.

In New Mexico, the northern Mexican gartersnake was once extant in the upper Gila River watershed in Grant and Hidalgo Counties. In April of 1977, Roger Conant, James S. Jacob, and a group of students counted approximately 100 northern Mexican gartersnakes in and around three small ponds on private land southwest of Mule Creek Village (Degenhardt et al. 1996). This population was considered a stronghold for the species in New Mexico (Degenhardt et al. 1996). Charlie Painter, State Herpetologist for the New Mexico Department of Game and Fish (NMDGF), returned to this location in May 1994 during favorable conditions and found only one specimen (C. Painter, pers. comm., New Mexico Department of Game and Fish, 2005). This represents a major decline in a stronghold population. Mr. Painter stated that he strongly suspects that northern Mexican gartersnakes are currently extirpated from New Mexico based on several factors including limited historical distribution in that State, modification and loss of suitable habitat, nonnative species introductions, and the lack of protections offered to non-listed, but declining native species on private land (all known records of northern Mexican gartersnakes in New Mexico are on private land) (C. Painter, pers. comm., New Mexico Department of Game and Fish, 2005).

The current distribution of northern Mexican gartersnakes within the United States is now generally believed to be limited to four geographic areas in Arizona: (1) Middle/upper Verde River—lower Tonto Creek; (2) Black River watershed; (3) upper Santa Cruz/San Pedro watersheds; and, (4) the San Bernardino National Wildlife Refuge in the upper Rio Yaqui watershed (Fitzgerald 1986; Rosen and Schwalbe 1988; Arizona Game and Fish

Department 1996; Rosen et al. 2001; Holycross and Burger 2005).

The subspecies is also historically known from the Sierra Madre Occidental and the Mexican Plateau in the Mexican states of Sonora, Chihuahua, Durango, Coahila, Zacatecas, Guanajuato, Nayarit, Hidalgo, Jalisco, San Luis Potosí, Aguascalientes, Tlaxacala, Puebla, México, Veracruz, and Querétaro (Rossman et al. 1996).

The northern Mexican gartersnake is considered a native riparian obligate (restricted to riparian areas when not engaged in dispersal behavior for the purposes of genetic emigration); occurring chiefly in the following general habitat types: (1) Source-area wetlands (e.g., cienegas (mid-elevation wetlands with highly organic, reducing soils), stock tanks (earthen water impoundments), etc.); (2) large river riparian woodlands and forests; and (3) streamside gallery forests (as defined by well-developed broadleaf deciduous riparian forests with limited, if any, herbaceous ground cover or dense grass) (Hendrickson and Minckley 1984; Rosen and Schwalbe 1988; Arizona Game and Fish Department 2001). Habitat characteristics preferred by the northern Mexican gartersnake varies based on the type of habitat. For example, in source-area wetlands, dense vegetation consisting of knot grass (*Paspalum distichum*), spikerush (*Eleocharis*), bulrush (*Scirpus*), cattail (*Typha*), deergrass (*Muhlenbergia*), sacaton (*Sporobolus*), Fremont cottonwood (*Populus fremontii*), Goodding's willow (*Salix gooddingii*), and velvet mesquite (*Prosopis velutina*) may be preferred (Rosen and Schwalbe 1988).

In small streamside riparian habitat, this snake is often associated with Arizona sycamore (*Platanus wrightii*), sugar leaf maple (*Acer grandidentatum*), velvet ash (*Fraxinus velutina*), Arizona cypress (*Cupressus arizonica*), Arizona walnut (*Juglans major*), Arizona alder (*Alnus oblongifolia*), alligator juniper (*Juniperus deppeana*), Rocky Mountain juniper (*J. scopulorum*), and a number of oak species (*Quercus* spp.) (McCranie and Wilson 1986; Cirett-Galan 1996).

In riparian woodlands consisting of cottonwood and willow or gallery forests of broadleaf and deciduous species along larger rivers, the northern Mexican gartersnake may be observed in less dense mixed grasses along the bank or in the shallows (Rossman et al. 1996; Rosen and Schwalbe 1988). Within and adjacent to the Sierra Madre Occidental in Mexico, it occurs in general habitat associations described as montane woodland, Chihuahuan desertscrub, mesquite-grassland, and Cordillera Volcánica montane woodland (McCranie and Wilson 1987).

The northern Mexican gartersnake is surface active at ambient temperatures ranging from 22° Celsius (C) to 33° C (71° Fahrenheit (F) to 91° and forages along the banks of waterbodies feeding primarily upon native fish [e.g., Gila topminnow (*Poeciliopsis occidentalis occidentalis*), desert pupfish (*Cyrpinodon macularius*), Gila chub (*Gila intermedia*), and roundtail chub (*Gila robusta*)] and adult and larval native ranid frogs [e.g., lowland leopard frog (*Rana yavapaiensis*) and Chiricahua leopard frog (*Rana chiricahuensis*)], but may also supplement its diet with earthworms and vertebrates such as lizards, small rodents, salamanders, and hylid frogs (treefrogs) (Rosen and Schwalbe 1988). An important component of suitable northern Mexican gartersnake habitat is an intact native prey base that is not significantly affected by nonnative, invasive species (Rosen and Schwalbe 1988, 1997; Clarkson and Rorabaugh 1989; Jennings et al. 1992; Holm and Lowe 1995; Fernandez and Rosen 1996; Rosen et al. 2001; Matthews et al. 2002; Holycross and Burger 2005). However, in some populations where the species is present with bullfrogs, adult northern Mexican gartersnakes will prey upon juvenile bullfrogs and/or bullfrog tadpoles (Holycross and Burger 2005). Juvenile northern Mexican gartersnakes may also prey upon nonnative mosquito fish (*Gambusia affinis*) (Holycross and Burger 2005).

Sexual maturity in male northern Mexican gartersnakes occurs at two years of age and at two to three years of age in females. Northern Mexican gartersnakes are ovoviviparous (eggs develop and hatch within the oviduct of the female). Mating occurs in April and May in their northern distribution followed by the live birth of between 7 and 26 neonates (newly born individuals) (average is 13.6) in July and August (Rosen and Schwalbe 1988). Approximately half of the sexually mature females within a population reproduce in any one season (Rosen and Schwalbe 1988).

Previous Federal Actions

We placed the northern Mexican gartersnake on the list of candidate species as a Category 2 species in 1988 (50 FR 37958). Category 2 species were those for which existing information indicated that listing was possibly appropriate, but for which substantial supporting biological data to prepare a proposed rule were lacking. In the 1996 Candidate Notice of Review (February 28, 1996; 61 FR 7596), the use of Category 2 candidates was discontinued, and the northern Mexican gartersnake was no longer recognized as a candidate.

Discussion

We discuss below each of the major assertions made in the petition, organized by the listing factors found in section 4(a)(1) of the Act. Section 4 of the Act and its implementing regulations found at 50 CFR 424 set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be an endangered or threatened species if it is threatened by one or more of the five factors described in section 4(a)(1) of the Act and meets either the definition of endangered or threatened pursuant to section 3 of the Act. An endangered species is any species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The five listing factors are: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence. The petitioners contend that all five factors are applicable to some degree for the northern Mexican gartersnake, as discussed below.

This 90-day finding is not a status assessment of the northern Mexican gartersnake and does not constitute a status review under the Act. The discussion presents information provided in the petition related to the factors used for evaluation of listing pursuant to section 4(a)(1) of the Act for the northern Mexican gartersnake.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Geographic Range and Status

Information Provided in the Petition

The petitioners claim that northern Mexican gartersnake populations in Arizona are in decline and are clearly threatened and reference several reports that provide data on survey efforts for the species. However, the petitioners' state that information on the northern Mexican gartersnakes' population status in New Mexico, and in particular, Mexico is less certain but believed to indicate potential extirpations or

declines (Lowe 1985; Stebbins 1985; Rosen et al. 2001; Degenhardt et al. 1996; Howland 2000).

In 2000, Rosen et al. (2001) resurveyed northern Mexican gartersnake populations known to be extant during the early to mid 1980s in southeastern Arizona and included additional information collected from 1993 to 2001. Rosen et al. (2001) reported their results in terms of increasing, stabilized, or decreasing populations of northern Mexican gartersnake. The primary means used to sample the herpetofauna included various trapping techniques and field searches. Three sites (San Bernardino National Wildlife Refuge, Finley Tank at the Audubon Research Ranch near Elgin, and Scotia Canyon in the Huachuca Mountains) were intensively surveyed with varied results at each site that were discussed by the petitioners and in further detail below.

According to the petitioners, the northern Mexican gartersnake was the primary gartersnake species at the San Bernardino National Wildlife Refuge from the 1950s through the 1970s. The species is currently extirpated or near extirpation in this area based on substantial survey effort on the refuge from 1985 to 1989 and again from 1992 to 1999, which noted severe declines (Rosen and Schwalbe 1997; Rosen et al. 2001). Investigators described the decline at the refuge as severe because in 1995, 31 northern Mexican gartersnakes were observed on the refuge at a standardized capture rate of 0.248 captures/day while in 1999, one northern Mexican gartersnake was observed with a standardized capture rate of 0.002 captures/day; a several-fold decline. The decline of the northern Mexican gartersnake on the refuge is largely attributed to catastrophic declines and the ultimate extirpation of a primary prey species, the Chiricahua leopard frog, a federally threatened species (Rosen and Schwalbe 1997; Rosen et al. 2001).

The petitioners reference Rosen and Schwalbe (1997) which also provides a detailed assessment of the status of the northern Mexican gartersnake, as well as other aquatic herpetofauna (reptiles and amphibians) (including bullfrogs and both Chiricahua and lowland leopard frogs) within the San Bernardino National Wildlife Refuge. Their work summarizes many projects which commenced in 1985 and focused on (1) the impacts of bullfrog invasion on the northern Mexican gartersnake; (2) the effectiveness of bullfrog control measures; and (3) the effectiveness of leopard frog recovery efforts in the San Bernardino Valley. The primary means used to sample the herpetofauna included various trapping techniques and field searches.

Rosen and Schwalbe (1997) noted the northern Mexican gartersnake as the primary historical gartersnake species in the San Bernardino National Wildlife Refuge, but sampling results in the mid-1980s indicated the species as "unusually uncommon." Observations of northern Mexican gartersnake populations in 1985 and 1986 in the San Bernardino National Wildlife Refuge indicated that recruitment was severely hampered due to the significantly limited number of specimens observed in the juvenile size classes. The investigators attributed this observation to bullfrog predation as most adult specimens captured displayed several scars from repeated apparent predation attempts by bullfrogs (Rosen and Schwalbe 1997). Bullfrog predation can be discerned by such tail-scaring. Native predators generally consume the entire animal whereas bullfrogs will often attempt to capture prey items larger than they can subdue and physically ingest, which results in the scaring observed in northern Mexican gartersnakes on the refuge and other areas where they occur with bullfrogs. Similar observations were made by Holm and Lowe (1995) in Scotia Canyon, Huachuca Mountains.

The petitioners reference Rosen and Schwalbe (1997) in stating that declines of northern Mexican gartersnakes have been noted in the San Bernardino Valley since before formal investigations commenced at the San Bernardino National Wildlife Refuge. Cumulative data of gartersnake captures (including both the northern Mexican gartersnake and the Marcy's checkered gartersnake (*Thamnophis marcianus marcianus*)) in the San Bernardino National Wildlife Refuge indicated a 39 percent decline in northern Mexican gartersnake capture rate per unit effort between the 1980s and the 1990s. These data were derived from aquatic trapping of northern Mexican gartersnake which provided Rosen and Schwalbe (1997) with substantial annual samples from 1993 to 1997. Rosen and Schwalbe (1997) reasoned this-decline could be attributed to natural response to persistent drought conditions but that it may have "masked a critical, rapid decline" in northern Mexican gartersnake populations of southeastern Arizona. The qualitative and quantitative data generated from the exhaustive research conducted on this species in this area clearly confirms the species is nearing extirpation from the San Bernardino National Wildlife Refuge, a former stronghold (Rosen and Schwalbe 1997; Rosen et al. 2001).

Surveys at Finley Tank located on the Audubon Research Ranch near Elgin, Arizona, that occurred during the period from 1985 to 1988 and again in 2000 were cited by petitioners. Chiricahua leopard frogs were noted as abundant in the 1985 and 1986 field seasons but have not been observed there since 1988. The petitioners cited an observation by Dr. Phil Rosen found in Rosen et al. (2001) where he explained, "At sites where leopard frogs are absent, often apparently due to introduced centrarchid fish [especially largemouth bass (*Micropterus salmoides*) and green sunfish (*Lepomis cyanellus*)] as at Babocamari (Cienega), northern Mexican garter snakes have become rare prior to the arrival of the bullfrog. With only fish to eat, growth is probably markedly reduced, and further, at centrarchid sites there are generally few small-to medium-sized fish, of edible size for most gartersnakes. In that scenario, gartersnake reproduction is likely to be reduced, and juvenile growth slowed, as is consistent with the low densities and generally smaller snakes seen at the Babocamari." The decline of native leopard frogs from Finley Tank, possibly exacerbated by the effect of recent drought years on the habitat within and around Finley Tank, was, according to petitioners, the principle factor which led to the precipitous decline in northern Mexican gartersnakes since 1988 at this location.

The last intensively resurveyed area referenced by the petitioners and discussed in Rosen et al. (2001) was Scotia Canyon in the Huachuca Mountains of southeastern Arizona. A comparison of survey data from Holm and Lowe (1995) suggests a possible decline of northern Mexican gartersnake populations in this area based on survey data from 1980 to 1982, with low capture rates in 1993, and even lower capture rates in 2000. Rosen et al. (2001) noted that bullfrogs were first detected in Scotia Canyon in 1989, and by 1992 bullfrogs had overtaken the canyon. As referenced in the petition, this bullfrog invasion affected the northern Mexican gartersnake age-class distribution in Scotia Canyon to one favoring older adults (too large to be eaten by bullfrogs) with little, if any, recruitment in the juvenile age-class due to bullfrog predation on neonatal and juvenile gartersnakes (Holm and Lowe 1995; Rosen et al. 2001). Rosen et al. (2001) commented that the data were too sparse to confirm that extirpation of northern Mexican gartersnakes from Scotia Canyon was inevitable, but that northern Mexican gartersnakes may still

persist there as a population vulnerable to extirpation.

The petitioners also reference Holm and Lowe (1995) who also conducted a herpetofaunal assessment in Scotia Canyon in 1993, using techniques such as active searching during optimal conditions and trapping using drift fences (barriers at ground level that direct the movements of small vertebrate species into buried containers adjacent to the barrier) with minnow traps. The purpose of this assessment was to compare the 1993 herpetofaunal community to the 1980 through 1982 results in the same area. As discussed in Rosen et al. (2001), Holm and Lowe (1995) noted bullfrogs to have increased markedly over the time between surveys. Native ranid frogs were uncommon during the surveys during the early 1980s and were declared locally extirpated from the study area in 1993. Of 39 northern Mexican gartersnakes captured in 1993, 7 were adults, 2 were yearlings, and 30 were young of the year; as compared to 6 yearlings and 2 small adults captured in 1980 to 1982. Holm and Lowe (1995) suggested such a population structure of northern Mexican gartersnakes indicated that while adults are capable of living longer and achieving significant size, recruitment is low due to high mortality of juvenile snakes from bullfrog predation. Their finding was supported by 93 percent of northern Mexican gartersnakes that were observed with broken tails likely caused by bullfrog predation attempts based upon the predator community in this area (Holm and Lowe 1995).

Four southeastern Arizona cienega habitats were identified by the petitioners as being resurveyed and subsequently discussed in Rosen et al. (2001): the Arivaca Cienega, the Babocomari Cienega, Cienega Creek at Empire-Cienega Ranch, and Lower Cienega Creek at Cienega Creek County Preserve. The Arivaca Cienega was a historical locality for both the northern Mexican gartersnake and the Chiricahua leopard frog although neither species has been found at this location since 1980 (Rosen and Schwalbe 1988; Rosen et al. 2001). Arivaca Cienega was surveyed on June 13, 1985, and the authors recorded that bullfrogs were "extremely abundant" and grazing pressure was heavy with over 500 cattle grazing in the habitat (Rosen and Schwalbe 1988). This locality was again sampled in 1994 and 2000 with extensive trapping and survey effort which yielded a single northern Mexican gartersnake (Rosen et al. 2001). Rosen et al. (2001) commented that the northern Mexican gartersnake population of the Arivaca Cienega likely succumbed to the effects of grazing and a massive bullfrog population, but that the single northern Mexican gartersnake found in 2000 indicated the "tenacity of a species that long ago apparently became rare in the area."

A herpetologist surveyed the Babocamari Cienega in June of 1958 and noted that northern Mexican gartersnakes, lowland leopard frogs, and "southern-form" (Chiricahua) leopard frogs were extremely abundant (Rosen and Schwalbe 1988; Rosen *et al.* 2001). Some 27 years later in 1985, research herpetologists again visited this location only to find four northern Mexican gartersnakes and no leopard frogs (Rosen *et al.* 2001). Surveys that occurred in 2000 did not find either species (Rosen *et al.* 2001). Babocamari Cienega was overtaken by black bullheads (*Ameiurus melas*) and largemouth bass (*Micropterus salmoides*) between the late 1950s and the mid-1980s (Rosen and Schwalbe 1988). Rosen *et al.* (2001) theorize that competition for prey and direct predation from nonnative fish were involved in the decline of northern Mexican gartersnakes and leopard frogs at Babocamari Cienega.

The remaining two cienegas identified by the petitioners and addressed by Rosen *et al.* (2001) are both associated with Cienega Creek in Santa Cruz and Pima counties of Arizona. The first, a former stronghold for northern Mexican gartersnakes, was Cienega Creek at Empire-Cienega Ranch which was considered the "most natural cienega remaining in southern Arizona that supports a large and dense population of Gila topminnow" (Rosen *et al.* 2001). Aquatic habitat parameters at this location prevented investigators from setting traps per standard protocols, which indirectly placed greater emphasis, and less certainty, on hand-collection of northern Mexican gartersnakes. Regardless, three adult northern Mexican gartersnakes were captured by hand at this location: two in 1986 and one in 2000. While still extant, both northern Mexican gartersnakes and leopard frogs have declined precipitously from this area and bullfrogs have successfully invaded.

The last of the cienega habitats that was specifically investigated by Rosen *et al.* (2001) and identified by the petitioners was Lower Cienega Creek at Cienega Creek County Preserve. Rosen *et al.* (2001) states that this cienega was historically lush with aquatic and emergent vegetation. Overgrazing during the early and mid-1980s denuded much of the area's vegetation and resulted in significant erosion evidenced by the downcutting of stream banks, in some cases in excess of 4.6 meters (15 feet) deep. Lowland leopard frogs have nonetheless remained extant through 2001 (Rosen *et al.* 2001). According to the petitioners, the cienega was purchased by Pima County in the 1990s and grazing has been prohibited on-site since that time. Subsequent trips to this area since the change in ownership have revealed a significant improvement in habitat characteristics. By 1998, the first northern Mexican gartersnake was observed on the new Cienega Creek preserve and has been occasionally observed there since (Rosen *et al.* 2001). Rosen *et al.* (2001), in acknowledgement of management objectives for this area, the potential for habitat regeneration and persistence, and its influence on Cienega Creek as a whole, stated that Cienega Creek "appears to have the highest potential of any site in the U.S. for preservation of the (northern) Mexican gartersnake."

According to the surveyors, the many sites in southeastern Arizona resurveyed by Rosen *et al.* (2001) since the 1980s yielded mixed results. Populations possibly increased at 1 site (lower Cienega Creek), were possibly stable at 2 (lower San Raphael Valley, Arivaca), were negative at 14 [Empire-Cienega Creek, Babocomari, Bog Hole, O'Donnell Creek, Turkey Creek (Canelo), Post Canyon, Scotia Canyon, Lewis Springs (San Pedro River), San Pedro River near Highway 90, Barchas Ranch Pond (Huachuca Mountain bajada), Heron Spring, Sharp Spring, Elgin-Sonoita windmill well site, and Upper 13 Reservoir (San Raphael Valley)], and showed major, demonstrable declines at 2 sites (San Bernardino National Wildlife Refuge and Finley Tank). No confirmed locality extirpations of northern Mexican gartersnake in southeastern Arizona were documented in Rosen *et al.* (2001).

Habitat

Information Provided in the Petition

The petitioners state that northern Mexican gartersnake habitat is threatened by a variety of factors such as livestock grazing, water withdrawal, streambed modification, dams and dam operation, groundwater pumping, recreation, mining, encroaching urban development, pollution, woodcutting, cultural impacts, and climate change (Hendrickson and Minckley 1984; Szaro *et al.* 1985; Lowe 1985; Rosen and Schwalbe 1988; and Rosen *et al.* 2001). The petitioners did not provide substantial information that addresses such threats to northern Mexican gartersnake habitat such as woodcutting,

pollution, cultural impacts, mining, and recreation but cited Lowe (1985), which discusses how such activities have led to the extirpations of riparian reptile and amphibian populations, and in some cases, communities in specific geographic areas.

The petitioners specifically identify the loss of and continuing threats to wetland and cienega habitats and reiterate their importance to this particular gartersnake subspecies (Hendrickson and Minckley 1984; Lowe 1985). Hendrickson and Minckley (1984) state that cienegas habitats are an aquatic climax community based on their data review. Many of these unique habitats of the southwestern United States, and Arizona in particular, have been lost in the past century to streambed modification, livestock grazing, cultural impacts, stream flow stabilization by upstream dams, channelization, and stream flow reduction from groundwater pumping and diversions (Hendrickson and Minckley 1984).

Many sub-basins where cienegas have been severely modified or lost entirely overlap, wholly or partially, the historical distribution of the northern Mexican gartersnake including the San Simon, Sulphur Springs, San Pedro, and Santa Cruz valleys of southeastern and south-central Arizona. The San Simon Valley possessed several natural cienega habitats with "luxuriant vegetation" prior to 1885 and was used as a watering stop for pioneers, military, and surveying expeditions (Hendrickson and Minckley 1984). In the subsequent decades, the disappearance of grasses and commencement of severe erosion were the result of heavy grazing pressure by large herds of cattle as well as the effects from wagon trails that paralleled arroyos, occasionally crossed them, and often required stream bank modification (Hendrickson and Minckley 1984). Today, only the artificially-maintained San Simon Cienega exists in this valley. Similar accounts of past conditions, adverse effects from historical anthropogenic activities, and subsequent reduction in the extent and quality of cienega habitats in the remaining valleys are also provided in Hendrickson and Minckley (1984).

The regional, ecological ramifications of future climate change were noted by the petitioners as a significant threat to the northern Mexican gartersnake habitat. Specifically, the petitioners restated findings discussed in the Final Report of the Southwest Regional Climate Change Symposium and Workshop that occurred in September 1997. Those findings indicated that the future climate in the American southwest may include decreases in summer and winter precipitation and an increase of up to 4 °C (7 °F) in average temperature. The petitioners claim that such changes in weather patterns and climactic conditions will result in more variability in flows that could compromise perennial and intermittent streams.

The petitioners also contend that northern Mexican gartersnake populations are vulnerable to local extirpation from the effects of livestock grazing within and adjacent to stock tanks, cienegas, and riparian areas (Rosen and Schwalbe 1988). Specifically, the loss of bank-side vegetation removes an essential habitat component for such behaviors as foraging and escaping predation. Once a northern Mexican gartersnake population has been extirpated, Rosen and Schwalbe (1988) state that unassisted recolonization of extirpated habitat is often precluded because it is either isolated between lengthy dewatered reaches of intermittent streams or not available to suitable overland routes of movement for an aquatic habitat specialist.

The petitioners cite Rosen and Schwalbe (1988) which provides an example of where a known (as of 1983) northern Mexican gartersnake population was extirpated in 1984 in Little Ash Creek of the upper Agua Fria watershed, potentially due to effects of overgrazing the stream banks and emergent vegetation. A survey of the area in April 1984 produced not a single specimen, and the authors noted severe overgrazing that had removed virtually all the cover used by northern Mexican gartersnakes in years prior. In August of the following year, the area was resurveyed. Rosen and Schwalbe (1988) noted that livestock had been removed from the area and that the vegetation had regrown to become suitable for northern Mexican gartersnake, yet an intensive survey again yielded no specimens.

The petitioners note that stock tanks used in livestock management also experience intentional or unintentional introductions of nonnative species of fish, amphibians, and crayfish by anglers and private landowners (Rosen et al. 2001). The alteration of habitat, such as bank-side vegetation removal and degradation, around stock tanks, may also favor nonnative predators as a secondary effect from livestock grazing and a threat to northern Mexican gartersnake (Rosen and Schwalbe 1988). Alternatively, well-managed stock tanks can provide habitat suitable for occupation of the northern Mexican gartersnake, both structurally and in terms of its prey base, especially when the tank remains devoid of nonnative species while supporting native prey species (Rosen and Schwalbe 1988).

The petitioners discuss how Szaro et al. (1985) assessed the effects of grazing on a similar species of gartersnake, the wandering (terrestrial) gartersnake (*Thamnophis elegans vagrans*). The assessment compared wandering (terrestrial) gartersnake populations in both grazed and ungrazed portions of the same stream. Results indicated that snake abundance and biomass were significantly higher in ungrazed habitat with a five-fold difference in number of snakes captured, despite the difficulties of observing snakes in dense, complex habitat (Szaro et al. 1985). Szaro et al. (1985) also noted the importance of riparian vegetation in thermoregulation, foraging, and predation-avoidance behaviors. The petitioners claim that the northern Mexican gartersnake continues to be impacted by on-going livestock operations and provided specific reports of adverse effects to northern Mexican gartersnake habitat from livestock grazing on public and private lands in southeastern Arizona where the species is thought to be extant (Rosen et al. 2001).

Lastly, the historical and potential future effects to northern Mexican gartersnake habitat from human population growth and subsequent water needs were discussed by the petitioners. Specifically, once-perennial extensive reaches of historical habitat for the northern Mexican gartersnake along the San Pedro and Santa Cruz rivers have been lost to the effects of groundwater pumping in response to increasing human populations and ensuing urbanization and development within the region. The petitioners also express concern for extant populations of northern Mexican gartersnake in the Arivaca Cienega and upper Verde River because of projected population growth, urbanization, and development in those areas and evidence of adverse effects to the water supply of these waterbodies due to increasing numbers of regional groundwater wells required to support such growth.

Summary of Habitat Threats and Evaluation of Information in the Petition

The petitioners have provided substantial scientific information that a variety of anthropogenic activities and other factors that affect the habitat of northern Mexican gartersnake.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioners state that lawful or unlawful field collecting of northern Mexican gartersnakes has not historically been a significant threat to the species. However, the petitioners cite that illegal field collecting may significantly impact small isolated populations, especially if reproductive females are removed from the population (Painter 2000). The northern Mexican gartersnake may not be collected without special authorization by the AGFD or the NMDGF. Specific discussion of the regulatory protections for the northern Mexican gartersnake is provided in Section D "Inadequacy of Existing Regulatory Mechanisms" below.

Evaluation of Information in the Petition

Since collection of the species is not known to be a major threat, the petitioners did not argue that field collection of the species for commercial, recreational, scientific, or educational purposes has contributed significantly to the current status of the northern Mexican gartersnake. However, the petitioners did provide a rational argument that small, isolated populations may be particularly vulnerable to extirpation from the future illegal collection of reproductive females.

C. Disease and Predation

Information Provided in the Petition and Service Files

The petitioners acknowledge that disease has not been a direct cause for population decline of the northern Mexican gartersnake. Based on our information, while disease has not been documented as a specific threat to northern Mexican gartersnake in the United States or Mexico, disease and nonnative parasites have been implicated in the decline of its native prey species. The chytrid fungus outbreak has been identified as a chief causative agent in the significant declines of many of the native ranid frog species and regional concerns exist for the native fish community due to nonnative parasites such as the Asian tapeworm (*Bothriocephalus achelognathi*) in southeastern Arizona (Rosen and Schwalbe 1997; Morell 1999; Sredl and Caldwell 2000; Hale 2001; Bradley et al. 2002).

The petitioners discussed the threats from nonnative species invasions to northern Mexican gartersnakes' functional prey base. The petitioners indicated that riparian communities in Arizona have been significantly impacted by a shift in species composition, from being historically dominated by native fauna to being increasingly impacted by an expanding assemblage of nonnative species (Rosen and Schwalbe 1988, 1995, 1996, 1997; Holm and Lowe 1995; Degenhardt et al. 1996; Fernandez and Rosen 1996; Rosen et al. 2001). The petitioners referenced research that suggested that a decline of native prey species resulting from the replacement with nonnative species has a significant adverse effect on northern Mexican gartersnakes (Rosen and Schwalbe 1988, 1995, 1996, 1997; Holm and Lowe 1995; Degenhardt et al. 1996; Rosen et al. 2001). Subsequently, the status of primary native prey species for northern Mexican gartersnake is declining (Rosen and Schwalbe 1988, 1995, 1996, 1997; Holm and Lowe 1995; Degenhardt et al. 1996; Fernandez and Rosen 1996; Rosen et al. 2001).

The petitioners identified several species as primary prey species for the northern Mexican gartersnake that had special Federal or state status. For example, the lowland leopard frog has been extirpated from New Mexico and from its former distribution in the lower Gila and Colorado rivers, and is considered Wildlife of Special Concern by the Arizona Game and Fish Department (AGFD). The Chiricahua leopard frog was listed as threatened without critical habitat under the Act on June 13, 2002 (67 FR 40790). The Gila chub was listed as endangered under the Act on November 2, 2005 (70 FR 66663). The Gila topminnow was listed as endangered under the Act on March 11, 1967 (32 FR 4001). The roundtail and headwater chubs were petitioned for listing as threatened or endangered under the Act, and we published a substantial 90-day finding on the petition for both species on July 12, 2005 (70 FR 39981) indicating that the petition provided substantial information for us to initiate a status review for the two species. Additionally, the roundtail chub is listed as threatened by the State of Arizona. The decline of many gartersnake prey species may be tied to predation by and competition with nonnative invaders; namely bullfrogs, crayfish, and nonnative fish (Rosen and Schwalbe 1988; Holm and Lowe 1995; Rosen et al. 2001).

Petitioners state that the northern Mexican gartersnake is particularly vulnerable to a loss in native prey species (Rosen and Schwalbe 1988). Rosen et al. (2001) examined this issue in greater detail and proposed two plausible explanations: (1) The species is reluctant to increase foraging efforts at the risk of increased predation; and (2) the species needs substantial food regularly to maintain its weight and health. If forced to forage more often for smaller prey items, a reduction in growth and reproductive rates may likely result (Rosen et al. 2001).

Direct observations of predation of northern Mexican gartersnake by native species are not well documented in the literature; however, several species of native fauna opportunistically take other native individuals when available (Rosen and Schwalbe 1988). Some examples of native predators on the northern Mexican gartersnake may include birds of prey, other snakes (kingsnakes (*Lampropeltis sp.*), whipsnakes (*Masticophus sp.*), etc.), wading birds, raccoons (*Procyon lotor*), skunks (*Mephitis sp.*), and coyotes (*Canus latrans*) (Rosen and Schwalbe 1988). The scientific community does not currently believe these native predators are responsible for the historical decline of northern Mexican gartersnake as all these species collectively evolved as a native biological community.

Alternatively, the petitioners note that nonnative predation threats have been and continue to be a serious factor in the decline of the northern Mexican gartersnake from both effects to the species itself and to its primary prey base. Many nonnative fishes have been introduced into northern Mexican gartersnake habitats, such as bullhead, green sunfish, and largemouth bass (Rosen and Schwalbe 1988). Rosen et al. (2001) noted the three most damaging nonnative predators to the northern Mexican gartersnake and its prey base in southern Arizona were bullfrogs, crayfish, and the green sunfish.

The petitioners claim that, of the various nonnative predators that have been introduced to post-settlement Arizona, the bullfrog appears to be the most detrimental to the northern Mexican gartersnake (Rosen and Schwalbe 1988, 1995, 1996; Holm and Lowe 1995; Rosen et al. 2001). Bullfrogs act as competitors to the northern Mexican gartersnake by sharing prey items such as frogs, fish, lizards, birds, and even mammals (Rosen and Schwalbe 1995). Bullfrogs are particularly damaging to and persistent in native riparian communities because adult bullfrogs are cannibalistic and larval bullfrogs can be sustained by grazing on aquatic vegetation, which means that a population of adult bullfrogs can sustain itself even when the native vertebrate prey base has been

extirpated by the species (Rosen and Schwalbe 1995).

The petitioners referenced documentation that discussed scientists and landowners having directly and indirectly observed bullfrogs eating northern Mexican gartersnakes in the juvenile and occasionally sub-adult size classes (Rosen and Schwalbe 1988, 1995, 1996; Holm and Lowe 1995; Rosen et al. 2001). A well-circulated photograph of an adult bullfrog in the process of consuming an adult or subadult northern Mexican gartersnake at Parker Canyon Lake, Cochise County, Arizona, taken by John Carr in 1964, provides photographic documentation of bullfrog predation (Rosen and Schwalbe 1988, 1995). The petitioners referenced a common observation in northern Mexican gartersnake populations that co-occur with bullfrogs is a preponderance of large, mature adult snakes with conspicuously low numbers of individuals in the neonate and juvenile age size classes due to bullfrogs eating young small snakes, indicating low recruitment (reproduction and survival of young) (Rosen and Schwalbe 1988; Holm and Lowe 1995).

The petitioners contend that bullfrogs that are unable to capture, subdue, and consume northern Mexican gartersnakes continue to maintain persistent predation pressure on individuals. Signs of attempted predation on northern Mexican gartersnakes can be readily observed in the field by examining the tail region of individual northern Mexican gartersnakes (Holm and Lowe 1995; Rosen and Schwalbe 1996). Rosen and Schwalbe (1988) discuss such observations from the San Bernardino National Wildlife Refuge where 78 percent of specimens observed had broken tails with a "soft and club-like" terminus, instead of a long, fine point, which suggests repeated injury (multiple predation attempts). Rosen and Schwalbe (1988) also noted bleeding from this region by gravid females when palpated for egg counts resulting from these "squeeze-type" of injuries inflicted by adult bullfrogs. Holm and Lowe (1995) observed that 89 percent of captured northern Mexican gartersnakes possessed similar tail injuries during survey work in Scotia Canyon in 1993, indicating heavy predation from abundant bullfrogs occurring there as well. These observations made by researchers and referenced by the petitioners indicate that, while a sub-adult or adult northern Mexican gartersnake may survive an individual predation attempt from a bullfrog while incurring tail damage, secondary effects from infection of the wound can result in mortality of individuals (Rosen et al. 1995). Smaller snakes are swallowed whole by bullfrogs.

The petitioners discuss specific research and field experimentation that has been dedicated to understanding the effects of bullfrog predation on the northern Mexican gartersnake and its prey base in southeastern Arizona, and possible methods for bullfrog eradication (Rosen and Schwalbe 1988, 1997; Holm and Lowe 1995; Rosen et al. 2001). Specifically, northern Mexican gartersnake and Chiricahua leopard frog (prey for the gartersnake) populations were repeatedly surveyed from 1986 through 1997 at locations on the San Bernardino National Wildlife Refuge that suffered from various degrees of bullfrog invasion. Survey sites ranged from an entirely native herpetofaunal community to one dominated by bullfrogs of various age classes.

The petitioners reference experimentation with bullfrog removal protocols was conducted at various sites on the San Bernardino National Wildlife Refuge in addition to a control site with similar habitat on the Buenos Aires National Wildlife Refuge with no bullfrog removal (Rosen and Schwalbe 1997). Removal protocols employed during this study (the extensive removal of adult bullfrogs) resulted in "remarkable blooms" in younger age-class bullfrogs where removal efforts were intensive (Rosen and Schwalbe 1997). Evidence from dissection samples of young adult and sub-adult bullfrogs indicated that these age-classes readily prey upon younger bullfrogs [4.25 inches (109 mm) snout-vent length] as well as juvenile gartersnakes, which suggests that the selective removal of large adults (favoring the young adult and sub-adult age classes) may indirectly lead to increased predation of leopard frogs and juvenile gartersnakes (Rosen and Schwalbe 1997). Consequently, this strategy was viewed as being potentially "self-defeating" and "counter-productive" but worthy of further investigation (Rosen and Schwalbe 1997). Both leopard frog and northern Mexican gartersnake populations at various locales on the San Bernardino National Wildlife Refuge, where bullfrogs have invaded, were notably affected by nonnative predation (Rosen and Schwalbe 1997). Rosen and Schwalbe (1997) also indicated that northern Mexican gartersnakes are precariously close to extirpation from that area.

The petitioners state that Rosen et al. (2001) concluded that the presence and expansion of nonnative predators (mainly bullfrogs, crayfish, and green sunfish) continue to be the primary causes of decline in northern Mexican gartersnake populations in southeastern Arizona due to their deleterious effects to the northern Mexican gartersnake and its prey populations. Specifically, Rosen et al. (2001) identified the expansion of the bullfrog into the Sonoita Grasslands and to the threshold of the Canelo Hills in the upper Santa Cruz River watershed, and the expansion of crayfish into Lewis Springs area of the upper San Pedro River watershed (these areas comprise one of the remaining four, disjunct, geographic areas in the United States where the species remains extant), as particularly threatening to the northern Mexican gartersnake because these nonnative species have proven difficult, if not impossible, to eradicate once established in complex, inter-connected habitats as discussed below.

The petitioners reference Rosen and Schwalbe (1997) who state that effective bullfrog and nonnative fish removal is possible in simple systems that can be manipulated, such as stock tanks; however, it can be expensive and specially-designed fencing is likely needed to prevent reinvasion. No methods are available to effectively remove bullfrogs or crayfish from lotic (moving water), or complex inter-connected systems. The petitioners references indicate that the inability of land managers to effectively address the invasion of nonnative species in such habitats highlights the particularly serious nature of this specific threat. While potential threats from human land use activities can usually be lessened or removed completely with adjustments to land management practices, the concern for the apparent irreversibility of nonnative species invasions becomes paramount.

While northern Mexican gartersnake populations can be significantly affected by bullfrog introductions, the petitioners contend they can also be adversely affected by disturbances in the fish community caused by *nonnative fish introductions (Rosen* et al. 2001). The observations of the northern Mexican gartersnake populations and individual growth trends made by Dr. Rosen at Finley Tank prior to the arrival of the exotic bullfrog provides insight on the effects of nonnative fish invasions and the potential nutritional ramifications of a fish-only diet in a species that normally has a varied diet which is largely supported by amphibian prey items (Rosen et al. 2001). The more energy that is expended in foraging, coupled by the reduced number of small to medium-sized fish available in low

densities, leads to nutritional deficiencies for both growth and reproduction because energy is instead allocated to maintenance and the increased energy costs of intense foraging activity (Rosen et al. 2001).

Evaluation of Information in the Petition

The petitioners have provided substantial scientific information that effects of nonnative predation directly on northern Mexican gartersnake and indirectly on its prey base have had negative implications for its status and continue to threaten the species.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioners contend that existing regulatory mechanisms, at both the State and Federal levels, have failed to cease or reverse the decline of the northern Mexican gartersnake. The petitioners identified the Service, AGFD, NMDGF, U.S. Forest Service, and the U.S. Bureau of Land Management as agencies who share a responsibility to protect the northern Mexican gartersnake either via jurisdictional directive or through land-management decisions.

At this time, northern Mexican gartersnake is considered State Endangered in New Mexico and take is prohibited without a scientific collecting permit issued by the NMDGF as per New Mexico Statutory Authority (NMSA) 17–2–41.C and New Mexico Administrative Code (NMAC) 19.33.6. However, while the NMDGF can issue monetary penalties for illegal take, only recommendations are afforded with respect to actions that result in destruction or modification of habitat (NMSA 17–2–41.C and NMAC 19.33.6).

In the December 2003 petition, the petitioners state that the AGFD allows for the collection of up to four northern Mexican gartersnakes per person per year as specified in Commission Order Number 43 (Arizona Game and Fish Department 2001). However, according to our information, in 2005, the AGFD amended Commission Order Number 43, which closed the season on northern Mexican gartersnakes. Take of northern Mexican gartersnakes is no longer permitted in Arizona without issuance of a scientific collecting permit as per Arizona Administrative Code R12–4–401 et seq. While the AGFD can seek criminal or civil penalties for illegal take of northern Mexican gartersnakes, only recommendations are afforded with respect to actions that result in destruction or modification of the northern Mexican gartersnakes' habitat. The northern Mexican gartersnake is considered a "Candidate Species" in the AGFD's draft Wildlife of Special Concern in Arizona (WSCA) (Arizona Game and Fish Department 1996). A "Candidate Species" is one "whose threats are known or suspected but for which substantial population declines from historical levels have not been documented (though they appear to have occurred)" (Arizona Game and Fish Department 1996). The purpose of the WSCA list is to provide guidance in habitat management implemented by land-management agencies. No specific conservation actions are mandated or otherwise afforded under this designation. The petitioners also claimed that neither agency has mandated recovery goals for the northern Mexican gartersnake, nor does either State have conservation agreements for this species.

The petitioners provided an assessment of the northern Mexican gartersnakes' legal status in Mexico, all subspecies under *Thamnophis eques* are listed as "Amenazadas," or Threatened, in the species" southern distribution in Mexico by the Secretaria de Medio Ambiente y Recursos Naturales (Secretaria de Medio Ambiente y Recursos Naturales 2003). This legal distinction means that the species is in danger of disappearance in the short- or medium-term future from the destruction and modification of its habitat and/or from the effects of shrinking population sizes (SEMARNAT 2001 [NOM–059–ECOL–2001]). This designation prohibits taking of the species, unless specifically permitted, as well as activities that intentionally destroy or adversely modify its habitat (SEMARNAT 2000 [LGVS] and 2001 [NOM–059–ECOL–2001]). Additionally, in 1988, the Mexican Government passed a regulation that is similar to the National Environmental Policy Act of the United States. This Mexican regulation requires an environmental assessment of private or government actions that may affect wildlife and/or their habitat (SEMARNAT 1988 [LGEEPA])).

The U.S. Bureau of Land Management considers the northern Mexican gartersnake as a "Special Status Species" and agency biologists actively attempt to identify gartersnakes incidentally observed during fieldwork for their records (L. Young, U.S. Bureau of Land Management, pers. comm., 2005). Otherwise, no specific protection or land-management consideration is afforded to the species on U.S. Bureau of Land Management lands.

The U.S. Forest Service does not include northern Mexican gartersnake on their "Management Indicator Species List" but it is included on the "Regional Forester's Sensitive Species List". This means that northern Mexican gartersnakes are "considered" in land management decisions, and individual U.S. Forest Service biologists may opportunistically capture and identify the gartersnakes observed incidentally in the field for their records, but are not required to do so. The petitioners claim that management under the U.S. Forest Service does not adequately protect the northern Mexican gartersnake from on-going threats. For example, the petition states that no particular management consideration was given to the extant populations of northern Mexican gartersnake on the actively-used Dukuesne and Lone Mountain grazing allotments on the Coronado National Forest where cattle are allowed direct access to northern Mexican gartersnake habitat.

According to information presented in the Petition, the vast majority of extant populations of northern Mexican gartersnake in the United States occur on U.S. Bureau of Land Management and U.S. Forest Service managed lands, yet the petitioners contend that neither the U.S. Bureau of Land Management or the U.S. Forest Service have management plans for the northern Mexican gartersnake.

Riparian species represent a unique community in Arizona and approximately 50 percent of federally listed species that are native to Arizona are riparian or aquatic species. The petitioners noted, as previously mentioned, several prey species of the northern Mexican gartersnake that had special legal status. Specifically, the petitioners named four primary prey species for the northern Mexican gartersnake, the Chiricahua leopard frog, Gila topminnow, Gila chub, and roundtail chub are federally listed or have been petitioned for listing (i.e., roundtail chub). Other listed or proposed riparian species, or their proposed or designated critical habitat, overlap the current or historical distribution of the northern Mexican gartersnake. However, the petitioners contend that, despite secondary protections that may be afforded to the northern Mexican gartersnake from federally listed species and/or their critical habitat, riparian and aquatic habitats in general continue to be adversely impacted for reasons previously discussed and the status of the northern Mexican gartersnake has continued to decline throughout its range in the United States.

Evaluation of Information in the Petition

The petitioners have provided substantial information that current regulatory mechanisms may not adequately protect the northern Mexican gartersnake and that the species may be continuing to decline throughout its distribution in the United States, and potentially in Mexico.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

Marcy's checkered gartersnake may have ecological implications to the decline and future conservation of the northern Mexican gartersnake in southern Arizona according to information presented in the petition. Marcy's checkered gartersnake is a semi-terrestrial species that is able to co-exist to some degree with nonnative predators. This is largely due to its ability to forage in more terrestrial habitats, specifically in the juvenile size classes (Rosen and Schwalbe 1988). In every age class, the northern Mexican gartersnake forages in aquatic habitats where bullfrogs also occur, which increases not only the encounter rate between the two species, but also the juvenile mortality rate of the northern Mexican gartersnake. Marcy's checkered gartersnake is a potential benefactor of this scenario. The petitioners contend that as northern Mexican gartersnake numbers decline within a population, space becomes available for occupation by checkered gartersnakes, which maintains density-dependent pressures on the gartersnake population, potentially accelerating the decline of the northern Mexican gartersnake (Rosen and Schwalbe 1988). This, in combination with the other factors described above that have adversely affected the northern Mexican gartersnake prey base and the suitability of occupied and formerly occupied habitat, has contributed to the decline of this species.

Evaluation of Information in the Petition

The petitioners have provided substantial scientific information indicating that under certain circumstances the Marcy's checkered gartersnake may outcompete the northern Mexican gartersnake and could exacerbate the decline of the northern Mexican gartersnake in areas that contain small populations of the subspecies.

Finding

We have reviewed the petition and literature cited in the petition. On the basis of our review, we find that the petition presents substantial information indicating that listing the northern Mexican gartersnake may be warranted. The petition provides information that the main threats appear to be predation and competition with nonnative species, and secondary threats are habitat destruction and alteration from a variety of human activities. As such, we will initiate a status review of the northern Mexican gartersnake and, following a review of available scientific and commercial data, make a determination of whether listing the species under the Act is warranted at that time.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that an emergency listing is not warranted for this species at this time because some local populations within the middle/upper Verde River—lower Tonto Creek and upper Santa Cruz/San Pedro watersheds are not facing immediate threats. However, if at any time we determine that emergency listing of the northern Mexican gartersnake is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the northern Mexican gartersnake is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary authors of this document are staff at the Arizona Ecological Services Office (see **ADDRESSES** section).

Authority

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

Dated: December 13, 2005.

Marshall Jones,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 06–1 Filed 1–3–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 2
Wednesday, January 4, 2006

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

Farm Service Agency

U.S. Warehouse Act Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; correction.

SUMMARY: The Farm Service Agency published a notice on November 28, 2005 (70 FR 71262) setting forth a schedule increasing the inspection and annual operational fees warehouse operators are charged under the United States Warehouse Act (USWA). The published notice contained an error in the cotton warehouse inspection fees. This notice corrects the error.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, (202) 720–7433; e-mail: *Roger.Hinkle@usda.gov.*

Correction

In the **Federal Register** of November 28, 2005, in FR Doc. 05–23353, on page 71263, correct the sentence following the Table labeled "Cotton," in columns 1 and 2 to read as follows:

Inspection fees will be charged at the rate of $85 for each 1,000 bales of licensed capacity, or fraction thereof, but in no case less than $170 nor more than $1,700.

Signed in Washington, DC, on December 28, 2005.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E5–8227 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site, Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Cherokee National Forest, USDA, Forest Service.

ACTION: Notice of new recreation fee site.

SUMMARY: Cherokee National Forest will begin charging a $15.00 fee per campsite for overnight use at Lost Corral Horse Camp, which is presently under construction. This new campground will facilitate equestrian use of Cherokee National Forest on the Ocoee/Hiwassee Ranger District. Fee revenue will support operations and maintenance of the campground and future site improvements.

DATES: Lost Corral Horse Camp is scheduled to open for public use in May 2006.

ADDRESSES: Forest Supervisor, Cherokee National Forest, 2800 Ocoee Street N, Cleveland, TN 37312.

FOR FURTHER INFORMATION CONTACT: Doug Byerly, Recreation Fee Coordinator, 423–476–9748.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. Cherokee National Forest presently manages four overnight recreation fee sites on the Ocoee/Hiwassee Ranger District. Recreation fees for overnight use range from $12.00 to $20.00 per single campsite based on the level of development. Lost Corral Horse Camp will offer vault toilet facilities, municipal water, horse trail access, and developed campsite with a picnic table, fire ring, lantern post and horse hitching area. Campsites will be available on a first come, first served basis.

Dated: December 16, 2005.

Leslie M. Auriemmo,

Deputy Forest Supervisor.

[FR Doc. 06–31 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agency's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart K, Agriculture Innovation Demonstration Centers.

DATES: Comments on this notice must be received by March 6, 2006, to be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta D. Purcell, Deputy Administrator, Cooperative Programs, Rural Development, USDA, STOP 3252, Room 4016, 1400 Independence Avenue, SW., Washington, DC 20250–3252. Telephone: (202) 720–7558, E-mail: *bobbie.purcell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agriculture Innovation Centers.

OMB Number: 0570–0045.

Expiration Date of Approval: May 31, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agriculture Innovation Center Program was authorized as a demonstration program by the 2002 Farm Bill to provide technical and business development assistance, through statewide innovation centers, to agricultural producers who want to add value to the commodities or products they produce. This program is administered by Cooperative Programs within USDA's Rural Development. Grants were awarded, on a competitive basis, in fiscal year 2003 only. The authorization for this program expired on September 30, 2004.

Estimate of Burden: Public reporting burden for this collection is estimated to average 4 hours per response.

Respondents: Only the 10 grantees awarded under fiscal year 2003 funding.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 30.

Estimated Total Annual Burden on Respondents: 55 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch (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 Rural Development, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden to collect the required information, including the validity of the strategy 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 on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 28, 2005.

David Rouzer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E5–8259 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 66–2005]

Foreign–Trade Zone 176 - Rockford, Illinois Area, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Rockford Airport Authority, grantee of FTZ 176, requesting authority to expand FTZ 176, in the Rockford, Illinois area, adjacent to the Rockford Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S. C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 21, 2005.

FTZ 176 was approved on March 1, 1991 (Board Order 511, 56 FR 10409, 3/12/91). The zone project currently consists of the following sites in the Rockford, Illinois area: *Site 1* (1,972 acres) industrial park area of the Greater Rockford Airport on Route F.A. 179; *Site 1a* (2 acres) warehouse facilities at 1635 New Milford School Road (82,200 sq. ft.) and 1129 Eighteenth Avenue (12,871 sq. ft.), Rockford; *Site 2* (6 acres) warehouse at 500 South Independence Avenue, Rockford; *Site 3* (566 acres, 2 parcels) CenterPoint Industrial Park (366 acres), north of the intersection of Route 38 and Brush Grove Road, Rochelle, and, Interstate Transportation Center industrial park (200 acres), west side of state Highway 38; *Site 4* (304 acres, 3 parcels)-LogistiCenter, southwest corner of I–39 and I–88, Rochelle; *Site 5* (53 acres)- South Rochelle industrial park (53 acres), south side of Rochelle on State Highway 251 and Veterans Parkway; and, *Site 6* (74 acres)-Rolling Hills Industrial Park, 2200 Lakeshore Drive, Woodstock.

The applicant is requesting authority to expand the general–purpose zone to include an additional site (133 acres) at the Crossroads Commerce Center, located at Interstate 88 and Main Street, in Rochelle (Ogle County), Illinois. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Pubic comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or

2. *Submissions via U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is March 6, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to March 20, 2006).

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zone Board's Executive Secretary at address No. 1 listed above and the U.S. Export Assistance Center, 515 N. Court St., Rockford, IL 61103.

Dated: December 21, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–8278 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1422]

Grant of Authority, Establishment of a Foreign–Trade Zone, Fargo, North Dakota

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ". . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Municipal Airport Authority of the City of Fargo, North Dakota (the Grantee), has made application to the Board (FTZ Docket 20–2005, filed 5/11/05), requesting the establishment of a foreign–trade zone at sites in the Fargo, North Dakota, area, adjacent to the Fargo Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 29277, 5/20/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 267, atthe sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 19th day of December 2005.

Foreign–Trade Zones Board

Carlos M. Gutierrez,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E5–8277 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India

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

SUMMARY: The Department of Commerce (the Department) has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges From India*, 59 FR 5994, (February 9, 1994). In response to a request by Hilton Forge, the Department is initiating this changed circumstances review to determine whether Hilton Metal Forgings, Ltd. is the successor–in-interest to Hilton Forge.

EFFECTIVE DATE: January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published in the **Federal Register** the antidumping duty order on certain forged stainless steel flanges from India (59 FR 5994).

Pursuant to an August 31, 2004 request from Hilton Forge, the Department conducted a new shipper review of flanges from India. On October 28, 2005, the Department published the final results of the new shipper review, determining that a dumping margin existed for Hilton Forge for the period February 1 through July 31, 2004. *See Certain Forged Stainless Steel Flanges from India; Final Results of New Shipper Review*, 70 FR 62094 (October 28, 2005).

On November 14, 2005, Hilton Forge filed a request for a changed circumstances administrative review of the antidumping duty order on flanges from India, claiming that Hilton Forge has changed its name to Hilton Metal Forging Ltd., and has converted itself from a limited partnership firm into a company limited by shares. Hilton Forge requested that the Department determine whether Hilton Metal Forgings, Ltd is the successor–in-interest to Hilton Forge, in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.216 (2005). In response to this request, the Department is initiating a changed circumstances review of this order.

Scope of the Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld–neck, used for butt–weld line connection; threaded, used for threaded line connections; slip–on and lap joint, used with stub–ends/butt–weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above–described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

Initiation of Antidumping Duty Changes Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order which shows changed circumstances exist to warrant a review of the order. On October 28, 2005, the Department published the final results of a new shipper review of flanges from India, which covered Hilton Forge. The Department determined that a dumping margin existed for Hilton Forge for the period February 1, 2004 through July 31, 2004. *See* 70 FR 60294. On November 14, 2005, Hilton Forge submitted its request for a changed circumstances review. With this request, Hilton Forge submitted certain information related to its claim that Hilton Forge changed its name to Hilton Metal Forging Ltd., and converted itself from a limited partnership company into a company limited by shares. Based on the information that Hilton Forge submitted regarding a name/status change, the Department has determined that changed circumstances sufficient to warrant a review exist. *See* 19 CFR 351.216(d).

In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005) (*Plate from Romania*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Plate from Romania*, 70 FR 22847. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although Hilton Forge submitted documentation related to its name change, it failed to provide complete

supporting documentation for the four elements listed above. Accordingly, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will issue questionnaires requesting factual information for the review, and will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). The notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will be altered, if warranted, pursuant only to the final results of this review.

This notice of initiation is in accordance with section 751(b)(1) of the Tariff Act, 19 CFR 351.216(b) and (d), and 19 CFR 351.221(b)(1).

Dated: December 28, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–8274 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Stainless Steel Plate in Coils from Italy: Initiation of Countervailing Duty Changed Circumstances Review and Notice of Consideration of Revocation of Order

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

SUMMARY: On December 2, 2005, Allegheny Ludlum Corporation and AK Steel Corporation filed a request for a countervailing duty changed circumstances review. Specifically, they requested that the Department of Commerce revoke the countervailing duty order on stainless steel plate in coils from Italy. In response, the Department of Commerce is initiating a changed circumstances review of the countervailing duty order on stainless steel plate in coils from Italy. Interested parties are invited to comment on this notice of initiation.

EFFECTIVE DATE: January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey R. Twyman, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0182 and (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1999, the Department of Commerce (the "Department") published a countervailing duty order on stainless steel plate in coils ("SSPC") from Italy. *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa*, 64 FR 25288 (May 11, 1999). The order was amended on March 11, 2003. *See Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa*, 68 FR 11524 (March 11, 2003). The amended order was corrected on April 24, 2003. *See Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa; Notice of Correction to the Amended Countervailing Duty Orders*, 68 FR 20115 (April 24, 2003).

On December 2, 2005, the Department received a request from Allegheny Ludlum Corporation and AK Steel Corporation, some of the petitioners in the original investigation ("petitioners"), that the Department initiate a changed circumstances review for purposes of revoking the countervailing duty ("CVD") order. Also, it is the petitioners' understanding that, upon revocation of the CVD order, the Department will fully refund any countervailing duties deposited pursuant to the order on unliquidated entries. The petitioners state that they are no longer interested in maintaining the countervailing duty order or in the imposition of CVD duties on the subject merchandise.

Scope of the Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat–rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold–rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

Initiation of Changed Circumstances Review

Section 751(d)(1) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.222(g), provide that the Department may revoke an antidumping or countervailing duty order, in whole or in part, after conducting a changed circumstances review pursuant to section 751(b) of the Act and concluding from the available information that changed circumstances exist sufficient to warrant revocation or termination. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of

interest in the order, in whole or in part. See section 782(h)(2) of the Act and section 351.222(g)(1) of the Department's regulations.

The petitioners state that they are producers of SSPC but do not identify the percentage of production of the domestic like product they represent. At present, the Department has no information on the record that the other known domestic producers of SSPC have no interest in maintaining the countervailing duty order with respect to the subject merchandise imported from Italy. Therefore, the Department does not have information on the record of this changed circumstances review that the petitioners account for substantially all, or at least 85 percent, of the production of the domestic like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001); *see also* 19 CFR 351.208(c). Accordingly, we are not combining this initiation with a preliminary determination, pursuant to 19 CFR 351.221(c)(3)(ii). This notice of initiation will accord all interested parties an opportunity to address this proposed revocation.

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, a countervailing duty order which shows changed circumstances sufficient to warrant a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the request made by the petitioners.

If, as a result of this review, we revoke the order, we intend to instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to applicable countervailing duties, and refund any estimated countervailing duties collected on all unliquidated entries of the merchandise subject to the order, as described above under the "Scope of the Order" section, entered, or withdrawn from warehouse, for consumption on or after September 4, 1998, *i.e.*, the publication date of the Department's preliminary determination. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy*, 63 FR 47246 (September 4, 1998). We will also instruct CBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 11, 1999, the date of publication of the countervailing duty order, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue unless, and until, we publish a final determination to revoke the countervailing duty order on SSPC from Italy.

Public Comment

Interested parties are invited to comment on the initiation of this changed circumstances review. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, and shall be served on all interested parties on the Department's service list.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results.

This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: December 23, 2005.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–8276 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Stainless Steel Sheet and Strip in Coils from Italy: Initiation of Countervailing Duty Changed Circumstances Review and Notice of Consideration of Revocation of Order

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

SUMMARY: On December 2, 2005, Allegheny Ludlum Corporation and AK Steel Corporation filed a request for a countervailing duty changed circumstances review. Specifically, they requested that the Department of Commerce revoke the countervailing duty order on stainless steel sheet and strip in coils from Italy. In response, the Department of Commerce is initiating a changed circumstances review of the countervailing duty order on stainless steel sheet and strip in coils from Italy. Interested parties are invited to comment on this notice of initiation.

EFFECTIVE DATE: January 4, 2006.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Audrey R. Twyman, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0182 and (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department of Commerce (the "Department") published a countervailing duty order on stainless steel sheet and strip in coils ("SSSS") from Italy. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999).

On December 2, 2005, the Department received a request from Allegheny Ludlum Corporation and AK Steel Corporation, some of the petitioners in the original investigation ("petitioners"), that the Department initiate a changed circumstances review for purposes of revoking the countervailing duty ("CVD") order. Also, it is the petitioners' understanding that, upon revocation of the CVD order, the Department will fully refund any countervailing duties deposited pursuant to the order on unliquidated entries. The petitioners state that they are no longer interested in maintaining the countervailing duty order or in the imposition of CVD duties on the subject merchandise.

Scope of the Order

The products covered by this order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific

dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at the following subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high–temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

Initiation of Changed Circumstances Review

Section 751(d)(1) of the Tariff Act of 1930, as amended (the "Act"), and 19 CFR 351.222(g), provide that the Department may revoke an antidumping or countervailing duty order, in whole or in part, after conducting a changed circumstances review pursuant to section 751(b) of the Act and concluding from the available information that changed circumstances exist sufficient to warrant revocation or termination. The Department may conclude that changed circumstances sufficient to warrant revocation (in whole or in part) exist when producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the order, in whole or in part. *See* section 782(h)(2) of the Act and section 351.222(g)(1) of the Department's regulations.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

The petitioners state that they are producers of SSSS but do not identify the percentage of production of the domestic like product they represent. At present, the Department has no information on the record that the other known domestic producers of SSSS have no interest in maintaining the countervailing duty order with respect to the subject merchandise imported from Italy. Therefore, the Department does not have information on the record of this changed circumstances review that the petitioners account for substantially all, or at least 85 percent, of the production of the domestic like product. *See Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001); *see also* 19 CFR 351.208(c). Accordingly, we are not combining this initiation with a preliminary determination, pursuant to 19 CFR 351.221(c)(3)(ii). This notice of initiation will accord all interested parties an opportunity to address this proposed revocation.

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, a countervailing duty order which shows changed circumstances sufficient to warrant a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the request made by the petitioners.

If, as a result of this review, we revoke the order, we intend to instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to applicable countervailing duties, and refund any estimated countervailing duties collected on all unliquidated entries of the merchandise subject to the order, as described above under the "Scope of the Order" section, entered, or withdrawn from warehouse, for consumption on or after November 17, 1998, *i.e.*, the publication date of the Department's preliminary determination. *See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy*, 63 FR 63900 (November 17, 1998). We will also instruct CBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 6, 1999, the date of publication of the countervailing duty order, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated countervailing duties on the subject merchandise will continue unless, and until, we publish a final determination to revoke the countervailing duty order on SSSS from Italy.

Public Comment

Interested parties are invited to comment on the initiation of this changed circumstances review. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, and shall be served on all interested parties on the Department's service list.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. This notice is published in accordance with section 751(b)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: December 23, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–8275 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The meeting will be held Wednesday, January 25, 2006, from 8:30 a.m. to 5 p.m., and Thursday, January 26, 2006, from 8:30 a.m. to 5 p.m.

Location: The Marriott Houston Hobby Airport, 9100 Gulf Freeway, Houston, Texas; Telephone: (713) 943–7979. The times and agenda topics are subject to change. Refer to the Web site listed below for the most up-to-date meeting agenda.

FOR FURTHER INFORMATION CONTACT: Captain Roger L. Parsons, NOAA, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and verbal comments and questions will be accepted at the end of the day on January 25 and 26, 2006, with a 30-minute period that will be extended if needed. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 30 copies) should be submitted to the DFO by January 18, 2006. Written comments received by the DFO after January 18, 2006, will be distributed to the HSRP, but may not be reviewed prior to the meeting date. Approximately 50 seats will be available for the public, on a first-come, first-served basis.

Matters To Be Considered: On January 25, 2006, a public forum is planned to discuss "The Role of NOAA's Navigation Services in Responding to Natural and Manmade Events Impacting the Nation's Marine Transportation Infrastructure." Representatives from NOAA, U.S. Coast Guard, U.S. Army Corps of Engineers, NOAA hydrographic survey contractors, and various sectors of the Maritime Transportation System will present their perspectives on economic impacts of port closures, Federal port re-opening efforts, NOAA's contributions in providing emergency navigation services and lessons learned following hurricanes Katrina and Rita in the Gulf Coast area. On January 26, 2006, topics will include (1) NOAA's Role on the Committee on the Marine Transportation System, (2) Delivery of Real-time Global Positioning System Data, (3) Physical Oceanographic Real-Time System (PORTS®) Prioritization Process, and (4) Public Statements.

Dated: December 23, 2005.

Captain Roger L. Parsons,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E5–8226 Filed 1–3–06; 8:45 am]

BILLING CODE 3510–JE–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments on the proposed baseline survey for the National Evaluation of Youth Corps. This survey will be completed by individuals applying for participation in a nationally representative sample of Youth Corps programs. Youth Corps are programs that provide young adults, particularly those that are educationally and/or economically disadvantaged, with a combination of work experience, education and community service. Many of the Youth Corps programs receive all or part of their funding from the Corporation.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 6, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Attention: Lillian Dote, Program Officer, Office of Research and Policy Development, Room 10901A, 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom, at Room 8102C, at the street address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3464, Attention: Lillian Dote, Program Officer, Office of Research and Policy Development.

(4) Electronically through the Corporation's e-mail address system: *ldote@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Lillian Dote, (202) 606–6984, or by e-mail at *ldote@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Corporation is interested in learning about the effects of national service on its participants. This study will use an experimental design to assess the outcomes associated with participation in national service. The survey will be completed by individuals applying to Youth Corps programs.

Current Action

This is an application for a new data collection.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Random Assignment Evaluation of Youth Corps.

OMB Number: None.

Agency Number: None.

Affected Public: Applicants to a nationally representative sample of Youth Corps programs.

Total Respondents: 7,500.

Frequency: On occasion.

Average Time Per Response: Averages 40 minutes.

Estimated Total Burden Hours: 5,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: December 28, 2005.

Robert Grimm,

Director, Office of Research and Policy Development.

[FR Doc. E5–8255 Filed 1–3–06; 8:45 am]

BILLING CODE 6050–$$–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091, FRL–8018–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Ambient Air Quality Surveillance, EPA ICR Number 0940–18, OMB Control Number 2060–0084

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 3, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number OAR–2002–0091, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2002–0091. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: David Lutz, Emissions, Monitoring and Analysis Division (D243–02), Environmental Protection Agency; telephone number (919) 541–5476; fax number: 919–541–1903; e-mail address: *lutz.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–OAR–2002–0091, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Air and Radiation Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are those State, local air pollution control agencies, and tribal entities which collect and report ambient air quality data for the criteria pollutants to EPA as well as other supporting measurements.

Title: Ambient Air Quality Surveillance.

ICR numbers: EPA ICR No. 0941–18, OMB Control No. 2060–0084.

ICR status: This ICR is currently scheduled to expire on June 30, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule. These data and information are collected by various State and local air quality management agencies and reported to the Office of Air Quality Planning and Standards within the Office of Air and Radiation, U.S. EPA.

This ICR reflects revisions of the previous ICR update of 2002, and it covers the period of 2007–2009. The number of monitoring stations, sampling parameters and frequency of data collection and submittal is expected to remain stable for 2007–2009.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with National Ambient Air Quality Standards (*i.e.*, ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM–10), ozone precursors, meteorological variables at a select number of sites and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The U.S. EPA and others (*e.g.*, State and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes. Some of the more prominent uses include informing the public and other interested parties of an area's air quality, judging an area's (*e.g.*, county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans (SIPs) in accordance with 40 CFR part 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The State and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the U.S. EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by each State and local agency, in AQS electronic format where possible.

Although the State and local air pollution control agencies and tribal entities are responsible for the operation of the air monitoring networks, the EPA funds a portion of the total costs through federal grants. These grants generally require an appropriate level of contribution, or "match," from the State/local agencies or tribal entities. The costs shown in this renewal are the total costs incurred for the monitoring program regardless of the source of the funding. This practice of using the total cost is consistent with prior ICR submittals and renewals.

This Information Collection is estimated to involve 168 respondents for a total cost of approximately $173,153,415 (total capital, and labor and non-labor operation and maintenance) plus a total burden of 2,105,714 hours. The labor costs associated with the hours is $111,019,923. Included in the total are other costs of non-labor operations and maintenance of $10,936,320 and equipment and contract costs of $51,197,172. In addition to the costs at the State and local air pollution control agencies and tribal entities, there is a burden to EPA of 135,793 hours and $11,695,453.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 12,534 hours per respondent. 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 which have subsequently changed; 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 168.

Frequency of response: Data submissions are required quarterly, but may occur more frequently.

Estimated total annual burden hours: 2,105,714 hours.

Estimated total annual costs: $173,153,415. This includes an estimated labor burden cost of $111,019,923 and an estimated cost of $51,197,172 for equipment and contract costs.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 298,892 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's consolidation of monitors into fewer sites, termination of unnecessary monitors, and more efficient procedures for measuring and reporting data.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: December 20, 2005.

William Lamson,

Acting Director, Emissions Monitoring and Analysis Division.

[FR Doc. E5–8269 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–8018–3]

California State Motor Vehicle Pollution Control Standards; Waivers of Federal Preemption; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice regarding waiver of federal preemption.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of Federal preemption for its Engine Manufacturers Diagnostics regulations for 2007 and subsequent model year heavy-duty vehicle engines (2007 EMD standards). By letter dated March 7, 2005, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its 2007 EMD standards, which require the functional monitoring of major emission control components/systems.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket No. OAR–2005–100. The docket is located at The Air Docket, room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material. Additionally, an electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the electronic docket system, select "search," then key in the appropriate docket ID number for Docket OAR–2005–100.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site *http://www.epa.gov/OTAQ*. Users can find these documents by accessing the OTAQ Web site and looking at the path entitled, "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site *http://www.epa.gov/docs/fedrgstr/EPA-AIR*.

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

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 343–9256. E-Mail Address: *Dickinson.David@EPA.GOV*.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for the 2007 EMD regulations.[1]

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

As further explained in the Decision Document supporting today's decision, EPA did not receive any comment suggesting that CARB's request should be denied based on the criteria set forth in section 209(b) of the Act.[2]

CARB determined that its 2007 EMD standards do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its 2007 EMD standards are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject 2007 EMD standards. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its 2007 EMD standards are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that

[1] The CARB Board approved the 2007 EMD standards by Resolution 04–16 on May 20, 2004 (See Attachment 3 to CARB's March 7, 2005, Waiver Request Letter). The regulations covered by today's waiver include title 13, California Code of Regulations (CCR), section 1971. For further discussion of the regulations covered by today's decision please see the Decision Document.

[2] EPA published a notice for hearing and comment on July 18, 2005 (70 FR 41218).

CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's 2007 California EMD standards are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by March 6, 2006. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: December 22, 2005.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E5–8263 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0268; FRL–7725–3]

Minor and Specialty Crops Integrated Pest Management (IPM) Special Projects; Request for Proposals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) announces the availability of up to $615,000 to address critical pest management needs of U.S. minor and specialty crop growers. The Agency anticipates funding up to five projects. The project period of performance is 3 years, with the possibility of extension. Proposed projects should address minor and specialty crop producers' critical pest management needs and demonstrate the importance and relevancy of the project to implementation of the Food Quality Protection Act (FQPA). This request for proposal was developed in response to recommendations made by the Committee to Advise on Reassessment and Transition (CARAT), a joint EPA and U.S. Department of Agriculture-sponsored federal advisory committee established to advise on the implementation of the FQPA, that the Agency facilitate the transition to reduced-risk pest management approaches for minor and specialty crops. You may access the full text of the grant announcement at *http://www.epa.gov/pesticides/grants/index.htm.*

DATES: Proposals must be postmarked on or before February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Pat Cimino, Office of Pesticide Programs (7501C), Minor Crop Advisor, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9357; e-mail: *cimino.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the 50 states, District of Columbia, U.S. territories or possessions, federally recognized Indian tribal governments and Native American Organizations, public and private universities and colleges, hospitals, laboratories, other public or private nonprofit institutions, and individuals.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0268. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1800 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may obtain electronic copies of this document through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/.* Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

You may access the full text of the grant announcement at *http://www.epa.gov/pesticides/grants/index.htm.* Go to *http://www.grants.gov* to electronically find and apply for competitive grant opportunities from all Federal grant-making agencies. Grants.gov is the single access point for over 1,000 grant programs offered by the 26 Federal grant-making agencies.

II. Overview

The following list provides key information concerning this funding opportunity:

- *Federal agency name*: Environmental Protection Agency (EPA).
- *Funding opportunity title*: Minor and Specialty Crops Integrated Pest Management Special Projects; Request for Proposals.
- *Funding opportunity number*: EPA–OPP–005.
- *Announcement type*: Announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) number*: 66.716.
- *Dates*: Proposals must be postmarked on or before February 21, 2006.

For detailed information concerning the grant announcement refer to the Agency website at *http://www.epa.gov/pesticides/grants/index.htm*. The full text of the grant announcement includes specific information regarding the: Purpose and scope; activities to be funded; award information; eligibility requirements; application and submission information; award review information; and regional agency contacts if applicable.

III. Submission to Congress and the Comptroller General

Grant solicitations containing binding legal requirements are considered rules for the purpose of the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The CRA 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 grant solicitation 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 in the **Federal Register**. This grant solicitation does not qualify as a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Pesticides.

Dated: December 5, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E5–8272 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0476; FRL–7754–2]

Pesticide Program Dialogue Committee, Pesticide Registration Improvement Act Process Improvement Workgroup; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Pesticide Program Dialogue Committee (PPDC), Pesticide Registration Improvement Act (PRIA) Process Improvement Workgroup will hold a public meeting on January 31, 2006. An agenda for this meeting is being developed and will be posted on EPA's website. The workgroup is developing advice and recommendations on topics related to EPA's registration process.

DATES: The meeting will be held on Tuesday, January 31, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at EPA's Offices in Rm. 1126, Crystal Mall #2, 1801 S. Bell St., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leovey, Immediate Office (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7328; fax number: (703) 308–4776; e-mail address: *leovey.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who are concerned about implementation of PRIA; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and the Federal Food, Drug, and Cosmetic Act (FFDCA). Other potentially affected entities may include, but are not limited to agricultural workers and farmers; pesticide industry trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local, and tribal governments; academia; public health organizations; food processors; and the public. Since other entities may also be intrested, the Agency has not attempted to describe all specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0476. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

EDOCKET EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/*, to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility of ensuring the safety of the American food supply, protection and education of those who apply or are exposed to pesticides occupationally or through use of products, and the general protection of the environment and special ecosystems from potential risks posed by pesticides.

The PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995 for a 2 year–term and has been renewed every 2 years since that time. PPDC provides advice and recommendations to OPP on a broad range of pesticide regulatory, policy, and program implementation issues that are associated with evaluating and reducing risks from the use of pesticides. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental and public interest and consumer groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State, local, and tribal governments; the

general public; academia; and public health organizations. Copies of the PPDC charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

This meeting will be open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Opportunity will be provided for questions and comments by the public. Any person who wishes to file a written statement may do so before or after the meeting by giving a copy of the statement to the person listed under **FOR FURTHER INFORMATION CONTACT.** These statements will become part of the official public docket and will be available for public inspection at the address listed under Unit 1.B.1. Do not submit any information in your request that is considered CBI. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT,** preferably at least 10 days prior to the meeting, to give EPA as much time as possible to precess your request.

List of Subjects

Environmental protection, Pesticide and pests.

Dated: December 16, 2005.

Marty Monell,

Acting Director, Office of Pesticide Programs

[FR Doc. 06–2 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0027; FRL–8018–5]

Board of Scientific Counselors, Land Research Program Subcommittee—January 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Land Subcommittee.

DATES: One conference call will be held on January 23, 2006, from 12 p.m.–2 p.m. eastern standard time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making an oral presentation at the conference call will be accepted up to one business day before the conference call. Comments must be received up to one business day before the conference call.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0027, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2005–0027.
- *Fax:* Fax comments to: 202–566–0224, Attention Docket ID No. EPA–HQ–ORD–2005–0027
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Land Research Program Subcommittee Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2005–0027.
- *By Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2005–0027. **Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0027. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center Home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Land Research Program Subcommittee 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 Land Research Program Subcommittee Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Heather Drumm, Designated Federal Officer, via telephone/voice mail at (202) 564–8239, via e-mail at *drumm.heather@epa.gov*, or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104-R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

General Information

Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in a teleconference meeting may contact Heather Drumm, Designated Federal Officer, via telephone/voice mail at (202) 564–8239, via e-mail at *drumm.heather@epa.gov*, or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by four work days prior to each conference call.

Proposed agenda items for the conference call include, but are not limited to: follow-up discussions from face-to-face meeting and discussion of progress on final report. The conference call is open to the public.

Information on Services for the Handicapped: Individuals requiring special accommodations at this meeting should contact Heather Drumm, Designated Federal Officer, at (202) 564–8239 at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

Dated: December 28, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E5–8270 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0562; FRL–8018–4]

Board of Scientific Counselors, Science to Achieve Results (STAR)/ Greater Research Opportunities (GRO) Fellowship Subcommittee Meetings—Winter/Spring 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of two meetings of the Board of Scientific Counselors (BOSC) Science to Achieve Results (STAR)/Greater Research Opportunities (GRO) Fellowship Subcommittee.

DATES: Two public conference calls will be held on: (1) Thursday, January 26, 2006 from 2 p.m. to 4 p.m., and (2) Thursday, February 16, 2006 from 2 p.m. to 4 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the conference calls will be accepted up to 1 business day before each conference call.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0562, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2005–0562.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2005–0562.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Science to Achieve Results (STAR)/Greater Research Opportunities (GRO) Fellowship Subcommittee—Winter/Spring 2006 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2005–0562.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2005–0562. **Note:** This is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0562. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Science to Achieve Results (STAR)/Greater Research Opportunities (GRO) Fellowship Subcommittee—Winter/Spring 2006 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 ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public who wish to obtain the call-in number and access code to participate in the conference calls may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above, by 4 working days prior to each conference call.

Proposed agenda items for the conference calls include, but are not limited to: (1) *First conference call:* charge questions, objective of the program review, overview of the Office of Research and Development, writing assignments, and future meetings; (2) *second conference call:* overview of STAR/GRO fellowship programs, and preparation for a face-to-face meeting in March 2006. The conference calls are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for

individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 27, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. E5–8271 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8018–6]

Notice of a Public Meeting on Designated Uses and Use Attainability Analyses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public meeting to discuss designated uses and use attainability analyses. The meeting is co-sponsored with the Water Environment Federation (WEF). The primary goals of the meeting are to help educate the public on current water quality standards regulations, guidance and practices related to designated uses and use attainability analyses, and to provide a forum for the public to join in discussions, ask questions, and provide feedback.

DATES: The meeting will be held on Wednesday, February 8, 2006 from 12:30 p.m. to 5:30 p.m. The meeting will continue on Thursday, February 9, 2006, from 8:30 a.m. to 3 p.m. The meeting will be preceded by an optional introductory session on the basics of designated uses as they apply to water quality standards implementation, scheduled for Wednesday, February 8, 2006 from 9:30 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Palmer House Hilton, 17 East Monroe Street, Chicago, IL 60603. The telephone number for the hotel is (312) 726–7500. A block of sleeping rooms has been reserved. When making room reservations, please reference the group name "EPA Multi-Stakeholders Meeting". The cutoff date for the reserved block of rooms is Friday, January 20th.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Harrigan, Standards and Health Protection Division, MC 4305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone number: (202) 566–1666; Fax number: (202) 566–1054; e-mail address: *harrigan.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this public meeting is to help educate the public on current water quality standards regulations, guidance and practices related to designated uses and use attainability analyses, and to provide a forum for the public to join in discussions, ask questions, and provide feedback. EPA also welcomes written remarks received by February 8, 2006, which can be sent to Ms. Harrigan by e-mail or by mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Additional Meetings

EPA anticipates announcing and holding one additional public meeting on these subjects in 2006. This meeting will likely be held in Seattle in the summer of 2006.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Ms. Harrigan at the phone number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section. Requests for special accommodations should be made at least five business days in advance of the public meeting.

Dated: December 22, 2005.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E5–8262 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0299; FRL–7750–6]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Trifloxystrobin in or on Corn and Soybeans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of the fungicide trifloxystrobin in or on corn and soybeans.

DATES: Comments must be received on or before February 3, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0299 and pesticide petition (PP) numbers PP 4F6892 and PP 5F6956, by one of the following methods:

- *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *E-mail*: *opp-docket@epa.gov*.
- *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0299. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0299. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be captured automatically 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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/docket.htm/*.

Docket: All documents in the docket are listed in the www.regulation.gov index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: *whitehurst.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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 this document by docket ID 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 Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of the fungicide trifloxystrobin in or on corn and soybean commodities. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number "EPA–HQ–OPP–2005–0299" in the search field. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

1. *PP 4F6892.* Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the fungicide trifloxystrobin in or on the food commodities corn, sweet (kernel plus cob with husks removed) at 0.04 parts per million (ppm); corn, sweet, forage at 0.6 ppm; and corn, sweet, stover at 0.25 ppm. A practical analytical method for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted to the Agency. The limit of detection (LOD) for each analyte of this method is 0.08 ng injected, and the limit of quantitation (LOQ) is 0.02 ppm. The method is based on crop-specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection.

2. *PP 5F6956.* Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the fungicide trifloxystrobin in or on soybean, seed at 0.08 ppm; soybean, forage at 8.0 ppm; soybean, hay at 20.0 ppm; and soybean, grain aspirated fractions at 4.2 ppm. A practical analytical method for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted to the Agency. The LOD for each analyte of this method is 0.08 ng injected, and the LOQ is 0.02 ppm. The method is based on crop-specific cleanup procedures and determination by gas chromatography with nitrogen-phosphorus detection.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E5–8273 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0009; FRL–8017–6]

RIN 2025–AA13

Privacy Act of 1974: Republication of Exempted System of Records

AGENCY: Environmental Protection Agency.

ACTION: Final notice of Privacy Act system of records.

SUMMARY: The Environmental Protection Agency (EPA) is publishing two exempt Privacy Act system of records. There has been an appendix added to the Criminal Investigative Index and Files notice.

DATES: The revisions will be effective upon publication.

ADDRESSES: Judy E. Hutt, Agency Privacy Act Officer, 1200 Pennsylvania Ave., (2522 T), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Judy E. Hutt, Agency Privacy Act Officer, 1200 Pennsylvania Ave., (2522 T), Washington, DC 20460, telephone (202) 566–1668.

SUPPLEMENTARY INFORMATION: These notices are being published after the publishing of Agency rules.

Dated: December 21, 2005.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

EPA–17

SYSTEM NAME:

OCEFT Criminal Investigative Index and Files.

SYSTEM LOCATION:

Criminal Investigation Division, Office of Criminal Enforcement, Forensics and Training, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004. Records are also maintained in field offices of the OCEFT Criminal Investigation Division. See the appendix for addresses of field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigations about whom data has been collected by criminal investigators of the Office of Criminal Enforcement, Forensics and Training, Criminal Investigation Division, and assembled in the form of investigative reports concerning violations of federal environmental statutes and regulations; persons who provide information and evidence that are used to substantiate environmental criminal violations are also covered by this system of records; OCEFT criminal investigators who participate in investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Investigative Index. The computer-enhanced investigative index systems contain selected information from the criminal investigative files. Such information includes, but is not limited to, personal data (e.g., name, address, telephone number); prior/secondary residences; vehicle information; associated persons (name and role); driver's licenses/aliases; associated companies (name and role); identifying numbers (number type, number and brief description); corporate data (company name, address, telephone number); corporate vehicle information; corporate identifying numbers; case information (e.g. case opened, date referred to EPA); criminal investigator comments; name and office of criminal investigator; dissemination information (e.g., which other agency requested the information); and other related investigative information.

2. Investigative Files. The investigative files contain all information relating to an investigative matter. In addition to the information contained in the computerized index system, the investigative files contain, but are not limited to, correspondence (case coordination reports, memos of conversation, and other records of communication relating to the investigation); interviews (witness interview statements generated by either an OCEFT/CID special agent or another agency or person); regulatory history (permits and reports generated as a result of normal program activity); technical support (program reports generated as a result of the investigation); investigative notes; electronic monitoring (reports requesting permission and use, transcripts of tapes); records checks (personal history, police information, fingerprint cards, photographs); property reports; property obtained and retained by OCEFT/CID including documents, personal property and physical evidence; manifests and other related investigative information.

3. Criminal Docket. The Criminal Docket is the computerized management information system for the Criminal Investigation Division, which reflects the activity and productivity of individual agents and each OCEFT/CID office. It is also the primary source for assembling statistical data for OCEFT/CID. There is no information contained in the Criminal Docket that is not also contained in the Criminal Investigative Index and Files. The Criminal Docket contains the OCEFT/CID case number, the case name, the most recent investigative or prosecutorial activity, the involved environmental media and environmental statutes, government employees involved in the investigation, case status and case closure codes. The case name may be either a company name or the name of a person that denotes the subject of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

18 U.S.C. 3063; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9603; Resource Conservation and Recovery Act, 42 U.S.C. 6928; Federal Water Pollution Control Act, 33 U.S.C. 1319, 1321; Toxic Substances Control Act, 15 U.S.C. 2614, 2615; Clean Air Act, 42 U.S.C. 7413; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136j, 136l; Safe Drinking Water Act, 42 U.S.C. 300h-2, 300i-1; Noise Control Act of 1972, 42 U.S.C. 4912; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. 11045; and the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. 1415.

PURPOSE(S):

To support and further the investigation of persons or organizations alleged to have criminally violated any environmental statute or regulation. Criminal violations of other federal statutes may have occurred in conjunction with such environmental violations and, therefore, may also be within the scope of an OCEFT/CID investigation and may be included in the record system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A, C, D, E, F, G, H, and K apply to this system. Records may also be disclosed:

1. To a potential source of information to the extent necessary to elicit information or to obtain cooperation of that source in furtherance of an EPA criminal investigation.

2. To the Department of Justice for consultation about what information and records are required to be publicly released under federal law.

3. To a federal agency in response to a valid subpoena.

4. To Federal and state government agencies responsible for administering suspension and debarment programs.

5. To international law enforcement organizations if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the organization or a law enforcement agency that is a member of the organization.

6. To the news media and public unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of privacy.

7. To any person if the EPA determines that compelling circumstances affecting human health, the environment, or property warrant the disclosure.

8. In connection with criminal prosecution or plea negotiations to the extent that disclosure of the information is relevant and necessary to the prosecution or negotiation and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files and computer databases.

RETRIEVABILITY:

Files are assigned a case file number and records are maintained in numerical order. Information on individuals may be retrieved through the computer index which can use, among other things, case titles, the names of individuals, organization names, driver's license numbers, vehicle or tag or vehicle identification numbers and other identifying numbers.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings. The index system also maintains a user log that identifies and records persons who access and use the system.

Retention and Disposal: The manner of Retention and Disposal of the computer index and files depends on how the information is used. The files and computerized data fall into one of three categories:

1. For cases investigated but not referred to the Department of Justice (DOJ) for criminal prosecution, files are retained in the applicable OCEFT/CID office for two years after the investigation is closed and then forwarded to the Federal Records Center (FRC) nearest the System Location for an additional three years. The FRC will normally destroy the files after three years.

2. For cases referred to DOJ but DOJ declines to prosecute, files are retained by the applicable OCEFT/CID office for five years after DOJ declines to prosecute and then retired to the FRC, where they are normally destroyed after five years.

3. For cases that become the subject of judicial action, files are retained by the applicable OCEFT/CID office for five years after completion of the judicial action and then forwarded to the FRC for an additional ten years of retention. The FRC normally destroys the case files after ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Criminal Investigations Division, Office of Criminal Enforcement, Forensics and Training, Environmental Protection Agency, FOIA Office (MC–2822 T) Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Freedom of Information Office. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

ACCESS PROCEDURE:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(j)(2) or (k)(2), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. Exemptions from access may be complete or partial, depending on the particular exemption applicable. However, EPA may, in its discretion, grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect.

CONTESTING PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

EPA employees and officials; employees of Federal contractors; employees of other Federal agencies and of State, local, tribal, and foreign agencies; witnesses; informants; public source materials, and other persons who may have information relevant to OCEFT/CID investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2) this system is exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f)(2) through (5); and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f)(2) through (5).

Appendix to Criminal Investigative Index and Files

Criminal Investigation Division offices where system records are located:

Boston Area Office, EPA/Criminal Investigation Division, 1 Congress Street, Boston, Massachusetts 02203

New York Area Office, EPA/Criminal Investigation Division, 26 Federal Plaza, 2nd Floor, Room 130, New York, New York 10278

Buffalo Resident Office, EPA/Criminal Investigation Division, 138 Delaware Avenue, Buffalo, New York 14202, Syracuse Domicile Office, EPA/Criminal Investigation Division, P.O. Box 7086, Syracuse, New York 13261–7086

Philadelphia Area Office, EPA/Criminal Investigation Division, 841 Chestnut Street, Philadelphia, Pennsylvania 19107

Baltimore Resident Office, EPA/Criminal Investigation Division, 7142 Ambassador Road, Baltimore, Maryland 21244

Pittsburgh/Wheeling RAC Office, EPA/Criminal Investigation Division, c/o U.S. EPA, 303 Methodist Building, 11th & Chaplin Streets, Wheeling, West Virginia 26003

Atlanta Area Office, EPA/Criminal Investigation Division Room 510, 345 Courtland Street, NE., Atlanta, Georgia 30365

Tampa Resident Office, EPA/Criminal Investigation Division, P.O. Box 172057, Tampa, Florida 33672

Miami Resident Office, EPA/Criminal Investigation Division, Federal Justice Building, 99 N.E. 4th St., 6th Floor, Miami, Florida 33132

Nashville Domicile Office, EPA/Criminal Investigation Division, c/o Attorney General & Reporter, 450 James Robertson Parkway, Nashville, Tennessee 37243–0494
Chicago Area Office, EPA/Criminal Investigation Division, 77 West Jackson, Chicago, Illinois 60604
Dallas Area Office, EPA/Criminal Investigation Division, First Interstate Bank Building, 1445 Ross Avenue, Dallas, Texas 75202–2733
Houston Resident Office, EPA/Criminal Investigation Division, 440 Louisiana, Suite #1150, Houston, Texas 77002–1635
New Orleans Domicile Office, EPA/Criminal Investigation Division, c/o U.S. Attorney, Hale Boggs Federal Building, 501 Magazine Street, Room 210, New Orleans, Louisiana 70130
Kansas City Area Office, EPA/Criminal Investigation Division, 726 Minnesota Avenue, Kansas City, Kansas 66101
St. Louis Resident Office, EPA/Criminal Investigation Division, 1222 Spruce Street, Room 10.302, St. Louis, Missouri 63103
Denver Area Office, EPA/Criminal Investigation Division, Suite 500, 999 18th Street, Denver, Colorado 80202–2413
San Francisco Area Office, EPA/Criminal Investigation Division, 75 Hawthorne St., C–1, San Francisco, California 94105–3901
Los Angeles Resident Office, EPA/Criminal Investigation Division, 600 S. Lake Avenue, Suite 502, Pasadena, California 91106
Phoenix Domicile Office, EPA/Criminal Investigation Division, c/o Office of the U.S. Attorney, 4000 U.S. Courthouse, 230 North First Avenue, Phoenix, Arizona 85025–0085
Seattle Area Office, EPA/Criminal Investigation Division, 1200 Sixth Avenue, Seattle, Washington 98101
Portland Resident Office, EPA/Criminal Investigation Division, Att: Resident Agent in Charge, 811 Southwest Sixth Ave., Third Floor, Portland, Oregon 97204

EPA–21

SYSTEM NAME:

External Compliance Program Discrimination Complaint Files.

SYSTEM LOCATION:

Office of Civil Rights, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed, or had filed on their behalf, discrimination complaints against recipients of Federal financial assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters or other documents initiating discrimination complaints, correspondence, internal memoranda and notes pertaining to the complaints; investigative reports and findings on the complaints; and related information concerning the complaints and investigations. A computerized case index includes cases by number, complainant (but not all complainants are identified because there are sometimes multiple complainants in a single case), and recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500, section 13), 33 U.S.C. 1251 note; Title III of the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq.); Title VIII of the Federal Fair Housing Act (42 U.S.C. 3601); Executive Orders 11246 (Sept. 24, 1965), 12250 (Nov. 2, 1980) and 12892 (Jan. 17, 1994); 40 CFR part 7.

PURPOSE(S):

This file system is maintained to support and further the discrimination complaint process, including the investigation and resolution of complaints, and to assure compliance with the nondiscrimination laws by recipients of Federal financial assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A, C, D, E, F, G, H, I, and K apply to this system. Records may also be disclosed:

1. To the Department of Justice or other Federal and State agencies when necessary to complete an investigation, enforce the nondiscrimination statutes set forth in the Authority section of this Notice, or assure proper coordination between Federal agencies.

2. To persons named as alleged discriminating officials to allow such persons the opportunity to respond to the allegations of discrimination made against them during the course of the discrimination complaint process.

3. To any potential source of information when necessary to obtain information relevant to an OCR investigation of a discrimination complaint, but only to the extent necessary to inform the source of the Purpose(s) of the request and to identify the type of information requested.

Policies and Practices For Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

STORAGE:

File folders. An index of cases is maintained on a computer database.

RETRIEVABILITY:

By name, case file number, or other characteristic.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in lockable file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

The record schedule for these records is currently under review and will be submitted to the National Archives and Records Administration. Proposed retention: Files are retained in the office for one year after the final decision is written, sent to the Federal Records Center for nine years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Complaints Resolution and External Compliance Staff, Office of Civil Rights, Environmental Protection Agency, FOIA Office (MC–2822 T) Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the Freedom of Information Office.

ACCESS PROCEDURE:

To the extent permitted under the Privacy Act of 1974, 5 U.S.C. 552a(k)(2), this system has been exempted from the provisions of the Privacy Act of 1974 that permit access and correction. However, EPA may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect. The exemption from access is limited in some instances by law to information that would reveal the identity of a confidential source. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR Part 16.

RECORD SOURCE CATEGORIES:

Complainants, recipients, witnesses, EPA investigators and/or contract investigators, other EPA personnel, and other persons with information relevant to the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in that subsection: 5 U.S.C. 552a(c)(3), (d), and (e)(1).

[FR Doc. 06–46 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8018–7]

Public Water System Supervision Program Revisions for the State of Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Wisconsin is revising its approved Public Water System Supervision Program. Wisconsin has revised its Public Notification (PN) Rule; its Lead and Copper Rule Minor Revisions (LCRMR) Rule; and Radionuclides Rule.

EPA has determined that these revisions by the State are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions to the State of Wisconsin's Public Water System Supervision Program. This approval action does not extend to public water systems (PWSs) in Indian Country, as that term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of federally recognized Indian tribes in Wisconsin, nor does it intend to limit existing rights of the State of Wisconsin.

Any interested party may request a public hearing. A request for a public hearing must be submitted by February 3, 2006, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by February 3, 2006, EPA Region 5 will hold a public hearing. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on February 3, 2006. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Wisconsin Department of Natural Resource, DG–2, 2nd Floor, 101 South Webster, PO Box 7921, Madison, Wisconsin 53707, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joe Janczy, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (608) 267–2763, or at *janczy.joseph@epa.gov*.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 3006–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: December 20, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E5–8261 Filed 1–3–06; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 6, 2006 from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- December 8, 2005 (Open and Closed)

B. Reports

- Fiscal Year 2005 Financial Audit

C. New Business—Regulations

- Governance—Final Rule

Dated: December 30, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–24705 Filed 12–30–05; 2:08 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[ET Docket No. 04–295; DA 05–3153]

Communications Assistance for Law Enforcement Act and Broadband Access and Services; Petition for Reconsideration and Clarification Filed

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on a petition for reconsideration and clarification filed by the United States Telecom Association, seeking reconsideration and clarification of the Commission's First Report and Order in ET Docket No. 04–295, which established that providers of facilities-based broadband Internet access services and interconnected voice over Internet Protocol (VoIP) services must comply with the Communications Assistance for Law Enforcement Act (CALEA).

DATES: Oppositions to these petitions must be filed by January 19, 2006. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

ADDRESSES: You may submit oppositions or replies, identified by ET

Docket No. 04–295, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2391.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 05–3153, released December 7, 2005. The full text of the petition and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *http://www.bcpiweb.com* or by calling 1–800–378–3160.

Background

On November 14, 2005, the United States Telecom Association filed a petition for reconsideration and clarification, seeking reconsideration and clarification of aspects of the Commission's First Report and Order in ET Docket No. 04–295. *See* United States Telecom Association, Petition for Reconsideration and for Clarification of the CALEA Applicability Order, ET Docket No. 04–295, filed November 14, 2005. The petition asks the Commission (1) to reconsider the compliance deadline established in the First Report and Order, and (2) to clarify the specific broadband access services that qualify as "newly covered services" under the First Report and Order.

Electronic Access and Filing

Pursuant to § 1.429 of the Commission's rules, 47 CFR 1.429, interested parties may file Oppositions to this petition on or before January 19, 2006. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired. When filing, please reference ET Docket No. 04–295. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and eleven (11) copies of each filing. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Federal Communications Commission.

Thomas J. Navin,

Chief, Wireline Competition Bureau.

[FR Doc. 06–10 Filed 1–3–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, January 9, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, December 30, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–24706 Filed 12–30–05; 2:30 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0268]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Regular Clearance, Extension of a currently approved collection;

Title of Information Collection: Service Use and Transition of Private Long-Term Care Insurance;

Form/OMB No.: OS–0990–0268;

Use: This is a longitudinal study of an admission cohort of private long-term care insurance claimants. A representative sample of claimants from nine companies will be followed for twenty months to better understand how they select and use services.

Frequency: Reporting;

Affected Public: Individuals or households;

Annual Number of Respondents: 1,650.00;

Total Annual Responses: 6,755.00;

Average Burden Per Response: ½ hour;

Total Annual Hours: 3,720.00;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0268), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 22, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–8230 Filed 1–3–06; 8:45 am]

BILLING CODE 4150–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection, Regular Approval;

Title of Information Collection: Medical Reserve Corps (MRC) Unit Profile and Reports;

Form/OMB No.: OS–0990–New;

Use: Medical Reserve Corps units are currently located in 330 communities across the United States and represent a resource of over 50,000 medical and public health volunteers.

In order to better support the MRC units in communities across the United States, and to plan for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activities is needed. MRC unit leaders will be asked to voluntarily update this information at least quarterly.

Frequency: Reporting, quarterly and on occasion;

Affected Public: State, local, or tribal governments, or other for profit, not for profit institutions;

Annual Number of Respondents: 400;

Total Annual Responses: 3,200;

Average Burden Per Response: 1 hour;

Total Annual Hours: 2,800.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0268), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 22, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E5–8231 Filed 1–3–06; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–06–0006]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under

review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–4766 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Statement in Support of Application for Waiver of Inadmissibility (0920–0006)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 212(a)(1) of the Immigration and Nationality Act states that aliens with specific health-related conditions are ineligible for admission into the United States. The Attorney General may waive application of this inadmissability on health-related grounds if an application for waiver is filed and approved by the consular office considering the application for visa. NCID Division of Global Migration and Quarantine uses this application primarily to collect information to establish and maintain records of waiver applicants in order to notify the U.S. Citizenship and Immigration Services (USCIS) when terms, conditions and controls imposed by waiver are not met. NCID is requesting the extension of this data collection for 3 years. Each respondent pays $80/year to mail their information to CDC. All respondents are physicians/health-care providers. The total estimated annualized burden hours are 167.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Number of respondents	Response/ respondents	Avg. time/ response (in hrs.)
CDC 4.422–1	200	1	10/60
CDC 4.422–1A	200	1	20/60
CDC 4.422–1B	200	1	20/60

Dated: December 28, 2005.

Betsey S. Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E5–8238 Filed 1–3–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The Office of Community Services (OCS) Evaluation Initiative.

OMB No.: New Collection.

Description: This questionnaire is part of a contract that addresses evaluation strategies for three programs administered by OCS: Community Economic Development (CED), Rural Community Facilities (RF), and Job Opportunities for Low-Income Individuals (JOLI). The Legislative requirement for two of these programs, *i.e.*, the RF and CED programs, is in Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act (COATS Human Services Reauthorization Act) of Oct. 27, 1998, Pub. L. 105–285, section 680(b) as amended. This legislative directive states that "The Secretary shall require all activities receiving assistance under this section to be evaluated for their effectiveness. Funding for such evaluations shall be provided as a stated percentage of the assistance or through a separate grant awarded by the Secretary specifically for the purpose of evaluation of a particular activity or group of activities."

Under Title V, section 505, of the Family Support Act of 1998, Pub. L. 100–485, section 505(f), JOLI was initially a demonstration program that required local evaluations of each project. When JOLI was reauthorized in 1996 (Pub. L. 104–193—Aug. 22, 1996), it no longer had demonstration status and evaluation requirements. As a result, a formal evaluation for the JOLI programs has not been conducted since the 1996 Pub. L. reauthorization. At this time, OCS is interested in a formal evaluation to assess the JOLI program.

OCS has chosen to evaluate all three of these programs through a separate contract awarded by the Secretary using the Office of Management and Budget's (OMB) Performance Assessment Rating Tool (PART) in order to critically review the overall design and effectiveness of each program in its totality. The evaluation initiative contract provides the central office with the mechanism to ensure that all programs evaluated will have consistent data that is in agreement with the direction of OMB and provides the Secretary with information on program efficiency and effectiveness.

The evaluation survey's primary purpose is to document and systematically evaluate the program performance of three OCS discretionary grant programs in qualitative and quantitative terms. Each of the three OCS discretionary grant programs—CED, RF, and JOLI—will be assessed using qualitative and quantitative evaluation methods that capture key information about program and grantee-level performance in four general areas: (1) Program purpose and design; (2) strategic planning; (3) program management; and (4) program results. The evaluation activities will build on the initial year's findings and methods, with the goal of expanding data collection and analysis to improve the validity and generalizability of findings.

The questionnaire will be administered online.

Respondents: Active CED and JOLI grantees with grants awarded from 2001 through 2004.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Questionnaire for OCS—CED and JOLI Grantees in the U.S.	172	1	1.5	258

Estimated Total Annual Burden Hours: 258.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 27, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–18 Filed 1–3–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

University of Arkansas/Food and Drug Administration Food Labeling; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Small Business Representative (SWR SBR) Program, in collaboration with The University of Arkansas (UA), is announcing a public workshop entitled "UA/FDA Food Labeling Workshop." This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on April 5, 2006, from 8 a.m. to 5 p.m., and on April 6, 2006, from 8 a.m. to 3 p.m.

Location: The public workshop will be held at the Continuing Education Center, 2 East Center St., Fayetteville, AR (located downtown).

Contact: Steven C. Seideman, 2650 North Young Ave., Institute of Food Science & Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or e-mail: *seideman@uark.edu*.

For information on accommodation options, contact Steven C. Seideman (see *Contact*).

Registration: You are encouraged to register by March 21, 2006. The University of Arkansas has a $150 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited, please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $200 payable to: "The University of Arkansas." If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the following form and submit along with a check or money order for $150 payable to the "The University of Arkansas." Mail to: Institute of Food Science & Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.

Name: _____

Affiliation: _____

Mailing Address: _____

City: _____ State:_____

Zip Code: _____

Phone: ( ) _____

FAX: ( ) _____

E-mail: ( ) _____

Special Accommodations Required: _____

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested at cost through the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: The FDA SWR SBR previously presented this workshop in Fayetteville, AR, on April 5 and 6, 2005 (70 FR 6450, February 7, 2005).

This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Denver District Office. The SWR SBR presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the SBR Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to

better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) health and nutrition claims, (4) the Food Allergen Labeling and Consumer Protection Act of 2004, and (5) special labeling issues such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increase voluntary compliance.

Dated: December 27, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8225 Filed 1–3–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0468]

Guidance for Industry on Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs for Use in Animals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#123) entitled "Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs for Use in Animals." This guidance provides recommendations regarding the development of target animal safety and effectiveness data to support approval of veterinary non-steroidal anti-inflammatory drugs (NSAIDs), specifically cyclooxygenase (COX) inhibitors.

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

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Linda Wilmot, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0135, e-mail: *lwilmot@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 10, 2004 (69 FR 65202), FDA published a notice of availability for a draft guidance entitled "Development of Target Animal Safety and Effectiveness Data to Support Approval of Non-Steroidal Anti-Inflammatory Drugs for Use in Animals" giving interested persons until January 24, 2005, to comment on the draft guidance. This final guidance reflects changes in response to comments received on the draft guidance. In addition, FDA provided further clarification regarding recommendations on the generation of pharmacokinetic (PK) data. In particular, FDA included several examples of the type of PK information that would be recommended for certain types of products including those involving repeated administration or multiple dosage forms.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information addressed in this guidance have been approved under OMB control number 0910–0032.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on the development of target animal safety and effectiveness data to support approval of non-steroidal anti-inflammatory drugs for use in animals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

As with all FDA guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket, and where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cvm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: December 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8223 Filed 1–3–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0493]

Guidance for Industry and Review Staff on Recommended Approaches to Integration of Genetic Toxicology Study Results; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry

and review staff entitled "Recommended Approaches to Integration of Genetic Toxicology Study Results." This guidance is intended to inform industry and the review staff in the Center for Drug Evaluation and Research (CDER) on how CDER views positive findings in genetic toxicology assays during drug development. The guidance provides recommendations on how to proceed with clinical studies while ensuring the safety of study participants when results in genotoxicity studies suggest a potential cancer or genetic hazard.

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

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: David Jacobson-Kram, Center for Drug Evaluation and Research (6411), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6488, Silver Spring, MD 20993, 301–796–0175.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and review staff entitled "Recommended Approaches to Integration of Genetic Toxicology Study Results." Pharmaceuticals administered through oral, intravenous, topical, and other routes, as appropriate, are subject to this guidance.

In the **Federal Register** of December 2, 2004 (69 FR 70153), FDA announced the availability of a draft version of the guidance entitled "Recommended Approaches to Integration of Genetic Toxicology Study Results." When the draft guidance was published, FDA requested comments on the document. Some changes were made to the draft document based on comments submitted to the docket including the following changes: (1) The guidance now suggests that for a compound giving positive results in a genetic toxicology assay, an alternative to demonstrating "mechanism of action" would be ruling out mechanisms involving direct interaction with dexoyribonucleic acid (DNA) and (2) alkaline elution is included as an example of an assay for measuring DNA damage. Other editorial changes were also made.

A number of comments to the docket suggested that the fourth test in the International Conference on Harmonisation (ICH) battery should be an option for compounds giving a positive response in one of the initial assays. This change was not included. Positive responses are primarily seen in the in vitro chromosomal aberration assay and/or the mouse lymphoma assay. Because these two tests measure common genetic lesions and have similar drug exposure protocols, the data from the two assays can be used to corroborate results.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on recommended approaches to integration of genetic toxicology study results. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: December 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8224 Filed 1–3–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–2215] (formerly 99D–2215)

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Revised Guidance for Industry on Impurities in New Veterinary Drug Substances (Revision); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comments of a draft revised guidance for industry (#92) entitled "Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R). This draft revised guidance, which updates a final guidance on the same topic for which a Notice of Availability was published in the **Federal Register** of July 7, 2000 (the 2000 guidance), has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). The draft revised document is intended to provide guidance for registration applicants on the content and qualification of impurities in new veterinary drug substances produced by chemical syntheses and not previously registered in a country, region, or member state.

DATES: Submit written or electronic comments by February 3, 2006 to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised guidance document.

Submit written comments on the draft revised guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

Comments should be identified with the full title of the draft revised guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: *dbensley@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. VICH is a parallel initiative for veterinary medicinal products. VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH steering committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH steering committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH steering committee meetings.

II. Draft Revised Guidance on Impurities in New Veterinary Drug Substances

In May 2005, the VICH steering committee agreed that a draft revised guidance entitled "Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R) should be made available for public comment. The draft revised guidance is a revision of a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of July 7, 2000 (65 FR 42020). The draft revised guidance clarifies the 2000 guidance, adds information, and provides consistency with more recently published VICH guidances. The draft revised guidance is the product of the Quality Expert Working Group of VICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

This draft revised document is intended to provide guidance for registration applications on the content and qualification of impurities in new veterinary drug substances intended to be used for new veterinary medicinal products, produced by chemical syntheses and not previously registered in a country, region, or member state.

The draft revised guidance includes revised text on recommended threshold limits and revised text on recommended specification limits for impurities. Additions to the glossary include definitions for the terms "identification threshold" and "qualification threshold." References to validated limits of quantitation were removed. In addition, minor editorial changes were made to improve the clarity and consistency of the document.

III. Paperwork Reduction Act of 1995

This draft revised guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft revised guidance have been approved under OMB control number 0910–0032.

IV. Significance of Guidance

This draft revised document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated "guidance" rather than "guideline." In addition, guidance documents must not include mandatory language such as "shall," "must," "required," or "requirement," unless FDA is using these words to describe a statutory or regulatory requirement.

The draft revised VICH guidance represents the agency's current thinking on impurities in new veterinary drug substances. This draft revised guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

V. Comments

This draft revised guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft revised guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft revised guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Electronic comments may also be submitted on the Internet at *http://www.fda.gov/dockets/ecomments.* Once on this Internet site, select Docket No. 1999D–2215, entitled "Draft Revised Guidance for Industry on Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R), and follow the directions.

Copies of the draft guidance document entitled "Draft Revised Guidance for Industry on Impurities in New Veterinary Drug Substances (Revision)" VICH GL10(R), may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm.*

Dated: December 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–8222 Filed 1–3–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–27]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Three Upcoming Meetings Via Conference Call.

SUMMARY: This notice sets forth the schedule and proposed agenda of three upcoming meetings of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. The meetings are a continuation of the Committee's meeting held by telephone conference on December 19, 2005, and recessed until the next meeting. These meetings are open to the general public, which may participate by following the instructions below.

DATES: The conference call meetings will be held on Wednesday, January 11; Thursday, January 12; and Monday, January 23, 2006, each meeting from 11 a.m. to 3 p.m. Eastern Standard Time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can link onto NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call from a HUD Web site, in the section marked "Business" "Manufactured Housing Consensus Committee Information". The link can be found at: *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm.*

Alternately, interested parties may contact Valaree Crawford of NFPA by phone at (617) 984–7507 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with Sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under Section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of these conference call meetings is to permit the Committee, at its request, to review and make further recommendations to the Secretary regarding proposed changes to the proposed Model Manufactured Home Installation Standards, and when that discussion is complete, to proposed changes to Title 24, *Code of Federal Regulations*, Part 3282 401 through 418 (Subpart I—Consumer Complaint Handling and Remedial Actions). The exceptional circumstances providing less than 15 calendar days notice of the meeting are that it is necessary to have this meeting on this date, which is a continuation of its December 19, 2005 meeting called to discuss these matters, to permit the Committee to continue its consideration and take action regarding the foregoing matters in a timely manner.

Tentative Agenda

A. Roll Call.

B. Welcome and Opening remarks.

C. Full Committee meeting and take actions on proposed changes to the proposed Model Manufactured Home Installation Standards.

D. Full Committee meeting to take actions on proposed changes to 24 CFR Part 3282, Subpart I.

E. Adjournment.

Dated: December 28, 2005.

Brian D. Montomery,

Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. E5–8254 Filed 1–3–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plans and Environmental Assessments for Chickasaw National Wildlife Refuge in Lauderdale County, TN; Hatchie National Wildlife Refuge in Haywood County, TN; Lower Hatchie National Wildlife Refuge in Lauderdale and Tipton Counties, TN; and Reelfoot and Lake Isom National Wildlife Refuges in Obion and Lake Counties, TN; and Fulton County, KY

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that Draft Comprehensive Conservation Plans and Environmental Assessments for the above referenced refuges are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

DATES: A meeting will be held to present the plans to the public. Mailings, newspaper articles, and posters will be the avenues to inform the public of the date and time for the meeting. Individuals wishing to comment on these draft plans and environmental assessments should do so no later than February 21, 2005.

ADDRESSES: Requests for copies of each of these plans and environmental assessments should be addressed to West Tennessee Refuges, 301 No. Church, Room 201, Dyersburg, Tennessee 38024; Telephone 731/287–0650. The plans may also be accessed and downloaded from the Service's Internet Web site *http://*

southeast.fws.gov/planning/. Comments on the draft plans may be submitted to the above address or via electronic mail to *Randy_Cook@fws.gov*. Please include your name and return address in your Internet message. 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 record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION:

Significant issues addressed in the draft plans include: threatened and endangered species; waterfowl management; neotropical migratory birds; bottomland hardwood forest restoration; agriculture; visitor services; funding and staffing; cultural resources; and land acquisition.

Alternatives

The Service developed the following alternatives for managing the refuges and selected Alternative D as the preferred alternative.

Alternative A. Existing refuge management and public outreach practices would be favored under this alternative. Refuge management actions would be directed toward achieving established refuge purposes including (1) preserving wintering waterfowl habitat (e.g., croplands, moist-soil management units), and (2) meeting the habitat conservation goals of the North American Waterfowl Management Plan. Additionally, these actions would contribute to other national, regional, and state goals to protect and restore habitat for shorebirds, wading birds, neotropical breeding birds, and threatened and endangered species. Refuge management programs would continue to be developed and implemented with little baseline biological information. Active habitat management would continue to be implemented through water level manipulations, moist-soil and cropland management, and forest management designed to provide a diverse complex of habitats that meet the foraging, resting, and breeding requirements for a variety of species. However, no additional moist-soil units would be developed and no new lands would be acquired.

Control of exotic plants or nuisance wildlife populations, including beaver, would be kept to a reactive level. Hunting and fishing would continue to be the major focus for the public use program, with no expansion of current opportunities. Current restrictions or prohibitions would remain, including the seasonal closure of the waterfowl sanctuary. No new visitor education facilities would be built and only limited improvements would occur for existing environmental education exhibits and interpretive materials.

Alternative B. This alternative would emphasize recreational uses and environmental education while maintaining a low maintenance approach to managing habitats. Additional staff and resources would be dedicated to allow for more public use activities in all areas of the refuges. Bottomland hardwood forests and moist-soil habitats would be maintained on existing lands but no additional moist-soil units would be developed. Cropland acres would be reduced to accommodate increased public use programs.

If opportunities and funding become available, new refuge lands could be acquired up to the completion of the current approved acquisition boundaries. Additional lands would be managed for public use rather than habitat management under this alternative.

Control of exotic plants or nuisance wildlife populations would be kept to a minimal and reactive level. Beaver control would be conducted only where necessary to protect property of adjoining landowners. However, the deer herd would be controlled through public hunting and opportunity would be expanded under this alternative. Hunting and fishing seasons and regulations would be examined to provide more opportunities.

Outreach opportunities would be designed to increase public understanding and enjoyment of fish and wildlife and their habitats. Efforts would include increased participation in the local civic organizations and in meeting with city, county, and State officials.

Secondary recreational uses would be considered for compatibility on refuge lands. The environmental education program could see a visitor education facility, exhibits, and interpretive materials. Additional staff and/or volunteers would be added in an effort to increase on-site public contacts, including enhanced environmental education and interpretation programs on and off the refuges.

Alternative C. Under this alternative, the emphasis would be the active and intensive management of existing fish, wildlife, and plant habitats. Primary management efforts would focus on restoring and enhancing habitats and associated plant communities for the benefit of migratory birds, threatened and endangered species, and other federal trust species. Forest habitat would be managed to increase and enhance the red oak component for migratory waterfowl by manipulating existing timber stands through both commercial and non-commercial harvest methods, and by incorporating native tree species in any future reforestation efforts. Additional staff and resources would be dedicated to allow for more habitat management activities in all areas of the refuges, such as tree planting in converted bottomland hardwood forests and a prescribed burning program. Integrated biological controls and harvest methods would be used to control exotic plant or nuisance wildlife species. The biological research and monitoring program would also receive more attention.

Refuge staff would continue to restore, enhance, and maintain existing bottomland hardwood forests and moist-soil units, and additional moist-soil units would be developed on existing and newly acquired lands. Cropland habitats would be managed by cooperative and force account farming and additional units would be developed on newly acquired lands.

As opportunities and funding become available, new refuge lands could be acquired to complete the current approved acquisition boundaries. Newly acquired lands would be managed with an emphasis on habitat management rather than public use under this alternative.

In contrast to the expansion of habitat work, new recreational opportunities for visitors would not be pursued and environmental education and outreach programs would remain at present levels. Hunting and fishing seasons and access would continue, but with the possibility of more seasonal closures to protect sensitive wildlife resources. The environmental education program could see a new visitor facility but only minimal improvements in existing exhibits and interpretive materials. A slight increase in public awareness of the refuges would be expected due to land protection efforts.

Alternative D. The Service planning team has identified Alternative D as the preferred alternative. This alternative was developed based on public input and the best professional judgment of the planning team. Strategies presented in the draft plans were developed as a direct result of the selection of Alternative D.

Alternative D represents a combination and/or compromise between Alternative B (Habitat Management Emphasis) and Alternative C (Public Use Emphasis). Whereas these two alternatives seek to maximize either

expanded wildlife habitat management or expanded public use opportunities, Alternate D seeks to optimize the benefits of the refuges to wildlife and people, recognizing that tradeoffs may preclude maximizing the benefits of each alternative. By seeking the "best of both" Alternatives B and C, Alternative D would promote better management and protection of fish, wildlife, and their habitats and higher quality recreational and educational programs for visitors.

Under Alternative D, refuge lands would be more intensely managed than at present to provide high quality habitat for wildlife, which would work toward fulfilling the habitat objectives outlined for the Mississippi Alluvial Valley Migratory Bird Initiative, and would include significant benefits for waterfowl, shorebirds, and neotropical migratory birds. With the implementation of this alternative, there would be significant habitat benefits to migratory bird species by increasing and enhancing breeding, wintering, and migration habitat for wetland-dependent migratory species. This alternative contributes directly to the objectives of the Lower Mississippi Joint Venture of the North American Waterfowl Management Plan, the Partners in Flight—Mississippi Alluvial Valley Habitat Conservation Plan, the United States Shorebird Conservation Plan—Lower Mississippi Valley/West Gulf Coastal Plain, West Tennessee Wildlife Resources Conservation Plan, and the North American Woodcock Plan, and provides integrated migratory bird management objectives in a landscape-level, biologically driven framework particularly for migratory birds. This would include creating and maintaining additional moist-soil units and restoring bottomland hardwood forest habitats.

Fisheries management would be emphasized and, where appropriate, restored for native diversity within the floodplain. Refuge habitats would be managed and restored for natural diversity in support of national and regional plans. Forest management would address the need to restore and enhance the red oak component for migratory waterfowl and develop vertical structure to provide habitat for a diversity of species, particularly priority migratory birds. Any future reforestation efforts would incorporate greater native tree species diversity.

This alternative would encourage more public recreational and educational uses, where feasible, while intensifying current habitat management. Hunting and fishing would continue with greater emphasis on the quality of the experience and with more diverse opportunities, including those for youth and disabled hunters/anglers. Education and interpretation would be promoted while providing programs and partnerships with local schools. Wildlife observation and photography opportunities would be expanded. Information guides and signage that highlight refuge management programs, as well as unique wildlife habitats, would also be developed. Efforts would also be undertaken to improve road maintenance in order to provide better visitor access.

A visitor center and headquarters office would be constructed on the refuges, with space for interpretation, environmental education, and staff.

Research studies would continue to be fostered and partnerships developed with universities and other agencies, with the refuges providing needed resources and study sites. Research would also provide benefits to conservation efforts throughout the Lower Mississippi River Valley to preserve, enhance, restore, and manage bottomland hardwood habitat. Inventorying and monitoring of birds, freshwater mussels, reptiles, and amphibians would be continued and expanded in order to assess population trends, correlate with environmental pressures, and provide baseline data to be used in development of appropriate management strategies. Additional staff would include biological, law enforcement, outreach, and maintenance personnel. Providing a wildlife biologist, outdoor recreation planner, maintenance workers, and an additional full-time law enforcement officer would enable the Service to fully develop and manage fish and wildlife resources and habitats, provide opportunities and facilities for wildlife observation and photography, provide environmental educational programs that promote a greater understanding of natural resources, and protect natural and cultural resources, as well as refuge visitors.

Under this alternative, the refuges would continue to acquire lands within the present acquisition boundaries for the use of compatible wildlife-dependent public recreation and environmental education opportunities.

Tracts that provide better-quality habitat and connectivity to existing refuge lands would receive higher priority for acquisition. The refuges would also use other important acquisition tools, including partnerships with conservation organizations, conservation easements with adjacent landowners, and leases/cooperative agreements.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 7, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–48 Filed 1–3–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 2 years, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2005. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
GLBA002–00	Holland America Line, Inc	Glacier Bay National Park & Pres.
GLBA003–00	Princess Cruises, Inc	Glacier Bay National Park & Pres.
GLBA004–00	P&O, Inc. (Princess Cruises)	Glacier Bay National Park & Pres.
GLBA005–00	Holland America Line-Westours, Inc	Glacier Bay National Park & Pres.

Conc ID No.	Concessioner name	Park
GLBA006–00	World Explorer Cruises	Glacier Bay National Park & Pres.
GLBA007–00	NCL Cruises Ltd. (Norwegian Cruise Line)	Glacier Bay National Park & Pres.
GLBA036–00	Crystal Cruises, Inc	Glacier Bay National Park & Pres.
GLBA046–00	Celebrity Cruises, Inc	Glacier Bay National Park & Pres.
GLBA050–00	Camival Cruise Line	Glacier Bay National Park & Pres.
GLBA040–00	West Travel, Inc. (Cruise West)	Glacier Bay National Park & Pres.
WRST001–98	Daniel R. Schwarzer (AAA Alaskan Outfitters, Inc.).	Wrangell-St. Elias NPres.
WRST002–98	Mel Gillis (Alaska Trophy Hunting & Fishing)	Wrangell-St. Elias NPres.
WRST003–98	W. Kirk Ellis (Devils Mtn Guiding Service)	Wrangell-St. Elias NPres.
WRST004–98	W. Cole Ellis (Ellis Big Game Guides and Outfitters).	Wrangell-St. Elias NPres.
WRST005–98	Dick Gunlogson	Wrangell-St. Elias NPres.
WRST006–98	Robert Fithian (Alaskan Mountain Guides)	Wrangell-St. Elias NPres.
WRST007–98	Mark Collins (Jungles, Deserts & Mountains)	Wrangell-St. Elias NPres.
WRST009–98	Lorene Ellis (Nabesna Glacier Guide Service)	Wrangell-St. Elias NPres.
WRST010–98	Matt Owen (Northern Air Trophy)	Wrangell-St. Elias NPres.
WRST011–98	Terry Overly (Pioneer Outfitters)	Wrangell-St. Elias NPres.
WRST012–98	Urban E. Rahoi (Ptarmigan Lake Lodge)	Wrangell-St. Elias NPres.
WRST013–98	Thomas Vaden (Solo Creek Guides)	Wrangell-St. Elias NPres.
WRST014–98	John Claus (Ultima Thule Outfitters)	Wrangell-St. Elias NPres.
WRST015–98	Paul Claus (Ultima Thule Outfitters)	Wrangell-St. Elias NPres.
WRST016–98	Richard G. Petersen (Wrangell Outfitters)	Wrangell-St. Elias NPres.
WRST017–98	Chuck McMahan (Gakona Guide Service)	Wrangell-St. Elias NPres.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–20 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
CC–OZAR001–88	Shane and Kimberly Van Steenis (Alley Spring Canoe Rental).	Ozark NSR.
CC–OZAR012–88	Akers Ferry Canoe Rental, Inc	Ozark NSR.
CC–OZAR016–89	Carr's Grocery & Canoe Rental	Ozark NSR.
CC–SLBE005–87	G. Michael Grosvenor (Manitou Island Transit)	Sleeping Bear Dunes NL.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–21 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2005. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
GRBA001	Raven's Roost	Great Basin National Park.
OLYM002	Log Cabin Resort, Inc	Olympic National Park.
YOSE001	Best's Studio, Inc	Yosemite National Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–22 Filed 1–3–06; 8:45 am]

BILLING CODE 312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
CHIS003	Truth Aquatics	Channel Islands National Park.
DEVA001	Xanterra Parks & Resorts, Inc	Death Valley National Monument.
DEVA002	Xanterra Parks & Resorts, Inc	Death Valley National Monument.
GOGA001	Blue & Gold Fleet, L.P	Golden Gate National Recreation Area.
GOGA008	Demosthemes Hontalas, Thomas Hontalas & William Hontalas.	Golden Gate National Recreation Area.
LACH003	Lake Chelan Recreation, Inc	Lake Chelan National Recreation Area.
LAME001	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAME003	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME005	Rex G. Maughan	Lake Mead National Recreation Area.
LAME006	Las Vegas Boat Harbor	Lake Mead National Recreation Area.
LAME007	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME008	Overton Beach Resort	Lake Mead National Recreation Area.
LAME009	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAME010	Seven Resorts, Inc	Lake Mead National Recreation Area.
LAVO001	California Guest Services, Inc	Lassen Volcanic National Park.
MORA001	Rainier Mountaineering, Inc	Mount Rainier National Park.
MUWO001	ARAMARK Sports & Entertainment, Inc	Muir Woods National Monument.
OLYM005	Forever Resorts, Inc	Olympic National Park.
ROLA003	Ross Lake Resort, Inc	Ross Lake National Recreation Area.
WHIS001	Kenneth D. Smith & Cheryl K. Smith	Whiskeytown National Recreation Area.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–23 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2005. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
CC–HOSP002–94	Buckstaff Bath House Company	Hot Springs National Park.
CC–VOYA002–96	Kettle Falls Hotel	Voyageurs National Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–24 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
STLI002–88	Evelyn Hill, Inc	Statue of Liberty National Monument.
FOMC001-96	Evelyn Hill, Inc	Fort McHenry National Monument.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–25 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2005. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
BOST002–88	Boston Concessions Group, Inc	Boston National Historic Park.
SHEN001–85	ARAMARK	Shenandoah National Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–26 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
CC–GWMP003–03	Belle Haven Marina, Inc	George Washington Memorial Parkway.
CC–NACE003–86	Buzzard Point Boatyard	National Capital Parks—East.
CC–NACE005–92	Langston Legacy Golf Corp	National Capital Parks—East.
CC–ROCR003–89	Golf Course Specialists, Inc	Rock Creek Park.

Conc ID No.	Concessioner name	Park
CC–PRWI001–88	Prince William Travel Trailer Village, Inc	Prince William Forest Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–27 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession permits, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
CC–BLRI002–83	Northwest Trading Post, Inc	Blue Ridge Parkway.
CC–BLRI001–93	Southern Highland Handicraft Guild	Blue Ridge Parkway.
CC–BUIS015–98	Milemark, Inc	Buck Island Reef National Monument.
CC–CAHA001–98	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CC–CAHA002–98	Cape Hatteras Fishing Pier, Inc	Cape Hatteras National Seashore.
CC–CAHA003–84	Hatteras Island Motel Limited Partnership	Cape Hatteras National Seashore.
CC–CAHA004–98	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.
CC–CALO003–98	Morris Marina, Kabin Kamps & Ferry Service, Inc.	Cape Lookout National Seashore.
CC–EVER002–82	Everglades National Park Boat Tours, Inc	Everglades National Park.
CC–EVER005–89	Florida National Parks & Monuments Assoc	Everglades National Park.
CC–EVER–001–80	Xanterra Parks and Resorts	Everglades National Park.
CC–FOSU001–86	Fort Sumter Tours, Inc	Fort Sumter National Monument.
CC–GRSM002–83	Leconte Lodge Limited Partnership	Great Smoky Mountains National Park.
CC–MACA002–82	Forever Resorts, LLC/Forever Resorts, Inc	Mammoth Cave National Park.
CC–VIIS001–71	Caneel Bay, Inc	Virgin Islands National Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–28 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 year, or until such time as such a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorizations will expire by their terms on or before December 31, 2005. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering these operations.

Conc ID No.	Concessioner name	Park
BRCA003	Xanterra Parks & Resorts, Inc	Bryce Canyon National Park.
CACH001	White Dover, Inc	Canyon de Chelly National Monument.
GLAC002	Glacier Park, Inc	Glacier National Park.
GRCA002	Xanterra Parks and Resorts	Grand Canyon National Park.
GRTE041	Bill and Vonona Scott, Living Trust	Grand Teton National Park.
YELL001	MEDCOR	Yellowstone National Park.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–29 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
AMIS002	Forever Resorts, LLC	Amistad National Recreation Area.
AMIS003	Rough Canyon Marina	Amistad National Recreation Area.
BAND001	Bandelier Trading, Inc	Bandelier National Monument.
BIBE001	Forever Resorts	Big Bend National Park.
BRCA002	Bryce-Zion Trail Rides	Bryce Canyon National Park.
CAVE001	Cavern Supply Company, Inc	Carlsbad Caverns National Park.
CURE001	Elk Creek Marina	Curecanti National Recreation Area.
GLAC001	Glacier Park Boat Company, Inc	Glacier National Park.
GLAC003	Mule Shoe Outfitters, LLC	Glacier National Park.
GLCA001	Wilderness River Adventures	Glen Canyon National Recreation Area.
GRCA004	Jerman-Mangum Enterprises, Inc	Grand Canyon National Park.
GRCA005	Verkamps, Inc	Grand Canyon National Park.
GRCA006	Arizona Raft Adventures, Inc	Grand Canyon National Park.
GRCA007	Arizona River Runners, Inc	Grand Canyon National Park.
GRCA010	Canyoneers, Inc	Grand Canyon National Park.
GRCA011	Colorado River & Trail Expeditions, Inc	Grand Canyon National Park.
GRCA015	Grand Canyon Expeditions, Inc	Grand Canyon National Park.
GRCA016	Canyon Expeditions, Inc	Grand Canyon National Park.
GRCA017	Diamond River Adventures, Inc	Grand Canyon National Park.
GRCA018	Ted C. Hatch River Expeditions, Inc	Grand Canyon National Park.
GRCA020	Moki Mac River Expeditions, Inc	Grand Canyon National Park.
GRCA021	O.A.R.S. Grand Canyon, Inc	Grand Canyon National Park.
GRCA022	John R. Vail	Grand Canyon National Park.
GRCA024	ARAMARK	Grand Canyon National Park.
GRCA026	Tour West, Inc	Grand Canyon National Park.
GRCA028	Western River Expeditions, Inc	Grand Canyon National Park.
GRCA029	Grand Canyon Discovery, Inc	Grand Canyon National Park.
GRTE001	Grand Teton Lodge Company	Grand Teton National Park.
GRTE003	Rex G. and Ruth G. Maughan	Grand Teton National Park.
LAMR002	Rex Maughan	Lake Meredith National Recreation Area.
MEVE001	ARAMARK	Mesa Verde National Park.
PEFO001	Xanterra Parks & Resorts, LLC	Petrified Forest National Park.
ROMO001	Rex G. and Ruth G. Maughan	Rocky Mountain National Park.
TICA001	Carl and Betsy Wagner	Timpanogos Cave National Monument.

DATES: *Effective Date:* January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jo. A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: December 15, 2005.

Alfred J. Poole, III,

Acting Assistant Director, Business Services.

[FR Doc. 06–30 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft General Management Plan Amendment/Draft Environmental Impact Statement for the Dayton Aviation Heritage National Historical Park, OH

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the draft general management plan amendment and environmental impact statement (GMPA/EIS) for Dayton Aviation Heritage National Historical Park (DAAV).

DATES: The GMPA/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. Public meetings will be announced through local media.

ADDRESSES: Copies of the GMPA/EIS are available by request by writing to Dayton Aviation Heritage National Historical Park, 30 South Williams Street, Dayton, Ohio 45409, by telephoning 937–225–7705, or by e-mail to *daav_superintendent@nps.gov*. The

document can be found on the Internet on the NPS Planning Web site at: *http://parkplanning.nps.gov/publicHome.cfm.*

FOR FURTHER INFORMATION CONTACT: Lawrence Blake, Superintendent, Dayton Aviation Heritage National Historical Park, 30 South Williams Street, Dayton, OH 45409, telephone 937–225–7705.

SUPPLEMENTARY INFORMATION: The DAAV consists of four non-contiguous units, the Wright Cycle Company complex, the Paul Laurence Dunbar State Memorial, the John W. Berry, Sr. Wright Brothers Aviation Center at Carillon Historical Park, and the Huffman Prairie Flying Field and Interpretive Center at Wright-Patterson Air Force Base. Together they preserve and interpret resources related to the lives of Wilbur and Orville Wright and Paul Laurence Dunbar, and the invention of flight.

The purpose of the general management plan amendment is to address the need for a maintenance and storage facility for the Wright Cycle Company complex, and the integration of interpretation and activities at Huffman Prairie Flying Field and the Huffman Prairie Flying Field Interpretive Center with security issues at the Wright Patterson Air Force Base. The GMPA/EIS describes and analyzes the environmental impacts of the proposed action and one additional action alternative for the future management direction related to these issues. A no-action alternative is also evaluated.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the 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 or organizations or businesses, available for public inspection in their entirety.

Dated: November 16, 2005.

David N. Given,

Acting Regional Director, Midwest Regional Office.

[FR Doc. E5–8251 Filed 1–3–06; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Environmental Impact Statement for the North Shore Road in Great Smoky Mountains National Park

Summary: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the President's Council on Environmental Quality (40 CFR 1500–1508), as implemented by Director's Order 12, the National Park Service (NPS) in coordination with the Federal Highway Administration has prepared a Draft Environmental Impact Statement (DEIS) to analyze alternatives for resolving issues related to the North Shore Road in the Great Smoky Mountains National Park (GSMNP). With the approval of the Department of Interior, the NPS is presenting the alternatives in the DEIS without identifying a preferred alternative. The NPS is seeking public comment on the alternatives before selecting a preferred alternative. This notice announces the availability of the DEIS and the locations of public hearings for the purpose of receiving comments on the draft document.

The purpose of the proposed action is to discharge and satisfy any obligations on the part of the United States that presently exist as the result of the July 30, 1943, Memorandum of Agreement (MOA) among the U.S. Department of the Interior (DOI), Tennessee Valley Authority, Swain County, North Carolina, and the State of North Carolina. The need of the project is to determine whether or not it is feasible to complete the road and to evaluate other alternative that would satisfy the obligation.

The DEIS analyzes one no-action alternative and four action alternatives for meeting the purpose and need of the project. The no-action alternative would continue current management practices and policies into the future. One of the action alternatives would provide Swain County with a monetary settlement to satisfy and discharge the obligations of the MOA. Each of the other three action alternatives would allow various levels of development and/or road construction within the project study area of GSMNP.

Under the Laurel Branch Picnic Area alternative a day-use area on the north side of existing Lake View Road would be constructed. Outdoor facilities would include a multi-use picnic shelter, picnic tables, several loop trails, drinking fountains, and restrooms. Under the Partial-Build Alternative to Bushnell, up to 8 miles (12.9 km) of new roadway from the existing tunnel west to the vicinity of the former Bushnell settlement would be constructed. The alternative would provide a boat-launching ramp and restricted boat dock. Located near the terminus of the new roadway would be a multi-use picnic shelter and picnic tables, a backcountry permit station, an information kiosk, restrooms, and a parking area. Exhibit/museum space would be designed to highlight local heritage of the area and may include concession opportunities. Under the Northern Shore Corridor Alternative, 29 to 34.3 miles of new roadway to the vicinity of Fontana Dam would be constructed. It would connect Lake View Road to NC 28. This alternative would include provisions for the development of an auto-tour guide describing the historic and natural points of interest along the route. Also, restrooms would be built at appropriate locations.

Dates: The DEIS will be available for public review and comments submitted until March 20, 2006. Public hearings will be held on February 2, 6, 7, 9, and 13, 2006. Hearings will be conducted from 4 p.m. to 8 p.m. or later as needed to hear all comments. Representatives of the NPS will be available at the public hearings to receive comments, concerns, and other input from the public related to the DEIS.

Specific information about the public hearings is as follows: February 2, 2006, 4:30–8 p.m., Swain County High School, Center for the Arts, Auditorium, 1415 Fontana Road, Bryson City, NC; February 6, 2006, 4:30–8 p.m., Robbinsville High School Auditorium, 301 Sweetwater Road, Robbinsville, NC; February 7, 2006, 4:30–8 p.m., Asheville Renaissance Hotel, One Thomas Wolfe Plaza, Asheville, NC; February 9, 2006, 4:30–8 p.m., Knoxville Marriott, 500 Hill Avenue, SE., Knoxville, TN; February 13, 2006, 4:30–8 p.m., Gatlinburg-Pittman High School Auditorium, 150 Proffitt Road, Gatlinburg, TN.

Addresses: The complete DEIS and associated appendices are available for review or download on the Internet at *http://www.northshoreroad.info.*

Copies of the DEIS will also be available for review at the following locations: Pack Memorial Library, 67 Haywood Street, Asheville, NC 28801; Marianna Black Library, 33 Fryemont Road, Bryson City, NC 28713; Charlotte and Mecklenburg County Main Library, 310 North Tryon Street, Charlotte, NC 28202; Qualla Boundary Public Library, 810 Acquoni Road, Cherokee, NC 28719; Anna Porter Public Library, 207 Cherokee Orchard Road, Gatlinburg, TN 37738; GSMNP Headquarters, 107 Park Headquarters Road, Gatlinburg, TN 37738; Lawson-McGee Library, 500 West Church Avenue, Knoxville, TN 37915; Cameron Village Regional Library, 410–200 Oberlin Road, Raleigh, NC 27605; Graham County Public Library, 80 Knight Street, Robbinsville, NC 28771.

For Further Information Contact: North Shore Road EIS, Attn: Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738, Telephone: 865/436–1207 or Fax: 865/436–1220.

Supplementary Information: In July 1943, the Tennessee Valley Authority (TVA), the DOI, the State of North Carolina, and Swain County, entered into a Memorandum of Agreement (MOA) that dealt with the creation of Fontana Dam and Reservoir and the flooding of lands and road within Swain County. As part of that agreement, 44,170 acres of land were ultimately transferred to the DOI and made part of GSMNP. The MOA also contained a provision by which the DOI was to construct a road through the Park, along the north shore of the newly formed Fontana Reservoir, to replace the flooded NC 288, contingent upon funds being appropriated by Congress.

The DEIS evaluates potential environmental consequences, of implementing the action alternatives, on GSMNP and the Appalachian National Scenic Trail. Impact topics include the human environment, physical environment, natural and cultural resources, aesthetics and visual resources, visitor use and experience, and park operations. Direct, indirect, and cumulative impacts along with options to address potential impacts were evaluated and are described for each resource area.

The public is advised that it is the practice of the NPS to make comments, including individual names and addresses of respondents, available for public review during regular business hours. There are circumstances in which a person prefers to have his or her name and other information withheld from the public record. Any person wishing to do this must state this prominently at the beginning of any correspondence or comment, and the request will be honored to the extent allowable by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be placed on the public record and will be made available for public inspection in their entirety. Anonymous comments will be included in the public record, however, the NPS is not legally required to consider or respond to anonymous comments.

The DEIS is being mailed to appropriate Federal, State and local agencies and organizations which have been involved with the project, have expressed, or are known to have an interest or legal role in this proposal.

After public review of the DEIS, the National Park Service will consider comments, and a Final EIS followed by a Record of Decision will be prepared. The Final EIS is scheduled for completion in November 2006.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: November 14, 2005.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 06–33 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Meredith National Recreation Area, Fritch, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Plan of Operations, and an Environmental Assessment, for a 30-day public review at Lake Meredith National Recreation Area, Moore County, Texas.

SUMMARY: The National Park Service (NPS), in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations has received from J.M. Huber Corporation a Plan of Operations and an Environmental Assessment for the re-entry of a natural gas well and the drilling of a lateral side track at Lake Meredith National Recreation Area.

DATES: The Plan of Operations, an Environmental Assessment is available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 E. Broadway, Fritch, Texas. Copies are available, for a duplication fee, from the Superintendent, Lake Meredith National Recreation Area, P.O. Box 1460, Fritch, Texas 79306–1460.

FOR FURTHER INFORMATION CONTACT: Paul Eubank, Chief of Resource Management, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, Texas 79036, Telephone: 806–857–0309.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by mailing them to the post office address provided above, or you may hand-deliver comments to the park at the street address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the decision-making record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the decision-making 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.

Dated: July 12, 2005.

Roceythia Y. Pollard,

Acting Superintendent.

Editorial Note: This Document was received in the Office of the Federal Register on December 29, 2005.

[FR Doc. E5–8250 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–KE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement for Manassas National Battlefield Park, VA

AGENCY: National Park Service.

ACTION: Notice of availability of the Draft General Management Plan and Draft Environmental Impact Statement for Manassas National Battlefield Park, Virginia (GMP/EIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, as amended; 42 United States Code 4332(C), the National Park Service (NPS) announces the availability of the GMP/EIS. The General Management Plan will guide management decisions related to cultural and natural resources, visitation, and park development for the next 15 to 20 years.

DATES: The GMP/EIS will remain available for public review for 60 days following publication of the notice of availability in the **Federal Register** by the Environmental Protection Agency. No public meetings are scheduled at this time. Public meetings will be scheduled during the 60 day review and announced in local media and online via the park's Web site at *http://www.nps.gov/mana* and via the NPS park planning Web site at *http://parkplanning.nps.gov*.

ADDRESSES: Paper and electronic copies on CD–ROM of the GMP/EIS are available by request. Interested persons and organizations can obtain a copy by writing to Manassas National Battlefield Park, c/o Dr. Robert K. Sutton, Superintendent, 12521 Lee Highway, Manassas, Virginia 20109–2005, by telephoning (703) 754–1861, or by e-mailing *robert_sutton.nps.gov*. The document is also available to be picked up in person at the headquarters of Manassas National Battlefield Park, 12521 Lee Highway, Manassas, Virginia 20109–2005. This document can also be found online at the NPS park planning Web site at *http://parkplanning.nps.gov*.

FOR FURTHER INFORMATION CONTACT: Robert K. Sutton, Superintendent, Manassas National Battlefield Park, 12521 Lee Highway, Manassas, Virginia 20109–2005, telephone (703) 754–1861, *robert_sutton@nps.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the GMP/EIS is to set forth the basic management philosophy for the park and to provide strategies for addressing issues and achieving identified management objectives for the next 15 to 20 years. The GMP/EIS describes and analyzes the environmental impacts of two action alternatives that would guide the future management of the park. Alternative B, the preferred alternative, is titled "The Two Battles of Manassas—A Comprehensive Understanding of Each Battle." Alternative C is titled "The Defining Moments of the Battles of Manassas—An Understanding of the Principal Events." Alternative A is also evaluated. It is the no-action alternative and would continue to guide the park as it is now under the current management practices.

Persons wishing to comment may do so by one of several ways. Written comments can be mailed to Dr. Robert K. Sutton, Superintendent, Manassas National Battlefield Park, 12521 Lee Highway, Manassas, Virginia 20109–2005. Comments may be submitted on-line at *http://parkplanning.nps.gov*. Written comments may also be hand-delivered to the park headquarters of Manassas National Battlefield Park, 12521 Lee Highway, Manassas, Virginia 20109–2005. Regardless of how the comment is submitted, please include your name and return address with your comment.

The NPS practice is to make comments available for public review during regular business hours, including the names and home addresses of respondents. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also might be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. Please note that 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.

The responsible official is Joseph M. Lawler, Regional Director, National Capital Region.

Dated: November 15, 2005.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 06–34 Filed 1–3–06; 8:45 am]

BILLING CODE 4312–JK–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–558]

In the Matter of Certain Personal Computer/Consumer Electronic Convergent Devices, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 6, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of InterVideo Digital Technology Corporation of Taiwan. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain personal computer/consumer electronic convergent devices, components thereof, and products containing same by reason of infringement of claims 1–10 of U.S. Patent No. 6,765,788 ("the '788 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and cease and desist orders.

On November 15, 2004, a petition for ex parte reexamination of the '788 patent was filed by Daniel R. McClure. Complaint, ¶ 58, p. 14, Exh. 19. On February 9, 2005, the U.S. Patent and Trademark Office ("PTO") granted the petition and on November 30, 2005, the PTO issued a First Office Action rejecting all ten claims of the '788 patent. Complaint, ¶ 58, p. 14, Exh. 19. In view of the foregoing reexamination proceedings, which could result in disallowance or amendment of the asserted claims, the Commission is ordering the presiding Administrative Law Judge to issue an initial determination ("ID") concerning whether the investigation should be stayed pending the completion of the reexamination of the '788 patent.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained

by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope Of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 29, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal computer/consumer electronic convergent devices, components thereof, and products containing same by reason of infringement of one or more of claims 1–10 of U.S. Patent No. 6,765,788, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) The presiding Administrative Law Judge shall set the target date pursuant to Commission Rule 210.51, 19 CFR 210.51, and, as soon as is practicable, issue an ID concerning whether to stay the proceedings in light of the reexamination of the '788 patent. The Administrative Law Judge is authorized to receive briefing on the issue of whether to grant a stay of the proceedings as he deems necessary;

(3) The ID issued pursuant to the preceding paragraph (whether issuing or denying a stay) shall be deemed an ID under Rule 210.42(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(c)) and the parties to the investigation may petition for review of the ID or the Commission may determine to review the ID on its own motion;

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—InterVideo Digital Technology Corporation, 7F, No. 19–5, Sanchong Road, Nankang District, Taipei, Taiwan 115 R.O.C.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dell, Inc., One Dell Way, Round Rock, Texas 78682.

WinBook Computer Corporation, 1555 W. Lane Avenue, Columbus, OH 43221.

Cyberlink Corp., 15F, 100, Ming-Chiuan Road, Hsin-Tien City, Taipei Hsien, Taiwan, R.O.C.

Cyberlink.com Corporation, 46750 Fremont Boulevard, Suite, Fremont, California 94538.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(5) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 29, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–8258 Filed 1–3–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–557]

In the Matter of Certain Automotive Parts; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 6, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ford Global Technologies, LLC of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D495,979, D496,890, D492,801, D501,685, D493,552, D497,579, D503,135, D491,119, D489,299, D489,658, D496,615, D503,912, D502,561, and D492,044. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import

Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 27, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D495,979, D496,890, D492,801, D501,685, D493,552, D497,579, D503,135, D491,119, D489,299, D489,658, D496,615, D503,912, D502,561, or D492,044, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Ford Global Technologies, LLC, 600 Parklane Towers East, One Parklane Boulevard, Dearborn, Michigan 48126.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Keystone Automotive Industries, Inc., 700 East Bonita, Pomona, California 91767.

U.S. Autoparts Network, Inc., 17150 S. Margay Avenue, Carson, California 90746.

Gordon Auto Body Parts Co., Ltd., No. 48, Nei-Shi Road, Lu Chu Hsiang, Taoyuan County, Taiwan 338.

Y.C.C. Parts Manufacturing Co., Ltd., No. 21, Si Chou Road, Si Hai Village, Ta Yan Hsiang, Tao-yuan Hsien, Taiwan.

TYC Brother Industrial Co., Ltd., 72–2 Shin-leh Road, Tianan, Taiwan.

Depo Auto Parts Ind. Co., Ltd., No. 20–3 Nan Shih Lane, Lu Kang, Chang-Hwa, Hslen, Taiwan 505.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a general exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 28, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–8256 Filed 1–3–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 203, Characteristics of the Insured Unemployed; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of the ETA 203, Characteristics of the Insured Unemployed. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 6, 2006.

ADDRESSES: Subri Raman, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave., NW., Washington, DC 20210. Phone number: 202–693–3058. Fax: 202–693–3229. (These are not toll free numbers.) E-mail: *raman.subri@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 203, Characteristics of the Insured Unemployed, is a once a month snapshot of the demographic composition of the claimant population. It is based on those who file a claim in the week containing the 19th of the month which reflects unemployment during the week containing the 12th. This corresponds with the BLS total unemployment sample week. This report serves a variety of socio-economic needs because it provides aggregate data reflecting unemployment insurance claimants' sex, race/ethnic group, age, industry, and occupation.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0009.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Characteristics of the Insured Unemployed.

OMB Number: 1205–0009.

Agency Number: ETA 203.

Affected Public: State Governments.

Cite/Reference/Form/etc.: ETA 203.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: .33 hours.

Estimated Total Burden Hours: 212 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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

Dated: December 22, 2005.

Cheryl Atkinson,

Administrator Office of Workforce Security.

[FR Doc. E5–8232 Filed 1–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 5159, Claims and Payment Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the collection of the ETA 5159, Claims and Payment Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 6, 2006.

ADDRESSES: Subri Raman, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave., NW., Washington, DC 20210; telephone number (202) 693–3058; fax (202) 693–3229 (these are not toll free numbers). E-mail: *raman.subri@dol.gov*. Copies of the Paperwork Reduction Act Submission Package are at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm*.

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 5159 report contains information on claims activities including the number of initial claims, first payments, weeks claimed, weeks compensated, benefit payments and final payments. These data are used in budgetary and administrative planning, program evaluation, actuarial and program research, and reports to Congress and the public.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0010.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Claims and Payment Activities.

OMB Number: 1205–0010.

Agency Number: ETA 5159.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 5159.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 720.

Average Time per Response: 2.6 hours.

Estimated Total Burden Hours: 1359 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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

Dated: December 22, 2005.

Cheryl Atkinson,

Administrator Office of Workforce Security.

[FR Doc. E5–8233 Filed 1–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired

format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Employment Administration is soliciting comments concerning the proposed extension with change of the Standard Job Corps Center Request for Proposal and Related Contracting Information Reporting Requirements. A copy of the proposed information request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before March 6, 2006.

ADDRESSES: Renee Evans, Office of Job Corps, 200 Constitution Avenue, Room N–4464, Washington, DC 20210. E-mail address: *raevans@doleta.gov*; Telephone number: (202) 693–3091 (This is not a toll-free number); Fax number: (202) 693–2767.

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps is an intensive, residential training program for economically challenged young people aged 16 to 24 who are out of school and out of work. Job Corps is authorized by Title I, Subtitle C, of the Workforce Investment Act (WIA) of 1998. WIA provides that up to 20 percent of the individuals enrolled in the Job Corps may be nonresidential participants. The program is principally carried out through a nationwide network of 122 Job Corps centers. The centers are located at facilities either owned or leased by the Federal Government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. It is the Department's responsibility to establish Job Corps centers and to select operators for them. Of the 122 current centers, 28 are operated through interagency agreements by the Departments of Agriculture and Interior. These centers are located on Federal lands controlled by these two agencies. The remaining 94 centers are managed and operated by large and small corporations and nonprofit organizations selected by the Department in accordance with the Federal Acquisition Regulations, and in most cases through a competitive procurement process. Many of the current contractors manage and operate more than one center.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Request for Proposal (RFP) provides potential offerors with the Government's expectations for the development of proposals to operate Job Corps Centers. The proposals developed by offerors in response to the RFP are evaluated in terms of technical factors and costs. These proposals serve as the principal basis for selection of a successful offeror. The operation of the Job Corps program is such that many activities required of contractors must be coordinated with other organizations, both Federal and nonfederal. Most of the information collection requirements of Job Corps Center operators stem directly from operational needs or are necessary to ensure compliance with Federal requirements and the terms of the contract. Statistical reports are normally generated from source documents directly by the Federal Government, not the contractors. Over the years, several paper forms have been automated, and in many instances, eliminated. Data is entered directly into a database and reports are generated as a result of the data. Examples of these are ETA Forms 2110 (Center Financial Report), 2181 & 2181A (Center Operations Budget), 6–127 (Job Corps Utilization Summary), 6–131A (Disciplinary Discharge), 6–131B (Review Board Hearings), 6–131C (Rights to Appeal), 6–40 (Student Profile), 6–61 (Notice of Termination) and 3–38 (Property Inventory Transcription.) In addition, several forms are now provided in Portable Data File (PDF) format. These forms are the 6–125 (Job Corps Health Staff Activity), 6–128 (Job Corps Health Annual Service Costs), 6–112 (Immunization Record), 6–135 (CM Health Record Envelope), 6–136 (CM Health Record Folder), 6–37 (Inspection Residential & Educational Facilities), 6–38 (Inspection Water Supply Facilities), and 6–39 (Inspection of Waste Treatment Facilities Costs.)

Type of Review: Extension of Regular Collection.

Agency: Employment and Training Administration.

Title: Standard Center Job Corps Request for Proposal and Related Contractor Information Gathering Reporting Requirements.

OMB Number: 1205–0219.

Recordkeeping: Center operators are required to keep accurate records on each Job Corps student. All records are required to be maintained on Center for five years.

Affected Public: Business, for profit and not-for-profit institutions, and Tribal Governments.

Burden Summary

I. The annual burden hours estimated for the preparation of the Standard Center Job Corps Request for Proposal submitted by new and experienced contractors is 15,300 hours.

II. Data collection for the Center Financial and the Center Operations Budget Reports is made more than quarterly, and is essential to ensure contractor financial compliance with contractual requirements and to ensure orderly operations of the program (1,522 hours).

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Financial Report	2110	122	90 at 12/year 28 at 4/year	1240	1	1240
Center Operations Budget	2181/2181/A	94	3	282	1	282
Total						1,522

III. Data previously collected on the forms listed below is now being collected in an electronic information system (477 hours). Data is entered utilizing a personal computer that transmits the data electronically to a centralized database. From this database many management and performance reports are created. Student personnel requirements such as: Student payroll information, student training and education courses received, student leave, disciplinary actions and medical information is also being collected in an electronic information system. Because identical information is being collected for multiple purposes, the burden for additional data entry has been reduced. The initial data entry is maintained in the national database and used for multiple reporting purposes, therefore reducing the need to enter the data more than once.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Utilization Summary.	6–127	122	12	1464	0.01875 (1 minute)	24
Disciplinary Discharge	6–131A	1500	1	1500	0.01875	25
Review Board Hearings	6–131B	1500	1	1500	0.01875	25
Rights to Appeal	6–131C	1500	1	1500	0.01875	25
Student Profile	6–40	1500	1	1500	0.01875	25
Notice of Termination	6–61	1500	1	1500	0.01875	25
Property Inventory Transcription.	3–28	126	52	6552	0.0275 (3 minutes)	328
Total						477

IV. Major recordkeeping and operational forms listed below that pertain to student and facility administrative matters are now provided in Portable Data Files or PDF forms. The total burden for processing these forms is 37,648 hours.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Health Staff Activity.	6–125	122	1	122	0.25 (25 min)	51
Job Corps Health Annual Service Costs.	6–128	122	1	122	0.25	51
Immunization Record	6–112	71000	1	71000	0.05 (5 min)	5,917
CM Health Record Envelope.	6–135	71000	1	71000	0.125 (13 min)	15,383
CM Health Record Folder	6–136	71000	1	71000	0.125	15,383
Inspection of Residential & Educational Facilities.	6–37	122	4	488	0.05	41
Inspection of Waste Treatment Facilities Costs.	6–39	23	4	92	1.25 (1hr. 25 min)	130
Inspection of Water Supply Facilities.	6–38	122	4	488	1.25	693
Total						37,648

V. A total of 7,578 burden hours are estimated for the preparation of the Center Operating Plans listed below that are required for the operation of a Job Corps center.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Operation Plan		94	1	94	30	2820
Maintenance		122	1	122	5	610
C/M Welfare		122	1	122	2	244
Annual VST		122	1	122	24	2928
Annual Staff Training		122	1	122	1	122
Energy Conservation		122	1	122	5	610
Outreach		122	1	122	2	244
Total						7,578

Total Estimated Burden: 62,525 hours.

Total Burden Cost (Capital/Startup): The Office of Job Corps has automated the data collection process for its Centers. The Center Information System allows all centers to directly input data into a national database. As a result, the burden hours associated with the preparation of forms has decreased significantly. The maintenance cost associated with the system is estimated

to be $2.7 million a year for hardware and software.

Total Burden Cost (Operating/Maintaining): The costs to contractors for accomplishing recordkeeping requirements is contracted and computed by the Federal government annually. While precise costs cannot be identified, at the present time and based on past experience, the annual and related costs for contractor staff are estimated to be $955,458, which represents an average cost of $14.00 per hour.

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

Dated: December 22, 2005.

Grace A. Kilbane,

Administrator, Office of Job Corps.

[FR Doc. E5–8234 Filed 1–3–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of one new information collection and an extension of two currently approved information collections. The new information collection is a voluntary survey of visitors to the National Archives Research Center in Washington, DC. The information will be used to determine how the various components of the new research facility affect visitors' level of satisfaction with the facility and the influences affecting why people visit. The information will support adjustments in our customer services that will improve the overall visitor experience. The first of two extensions of currently approved information collections is used when former Federal civilian employees and other authorized individuals request information from or copies of documents in Official Personnel Folders or Employee Medical Folders from the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA). The second of two extensions of currently approved information collections is a survey of Customer Satisfaction at the National Personnel Records Center (Military Personnel Records [MPR] facility) of the National Archives and Records Administration. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 6, 2006 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; faxed to 301–837–3213; or electronically mailed to *comments@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213 or *comments@nara.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA'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; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* National Archives Public Research Facility Customer Satisfaction Survey.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the National Archives Research Facility in Washington, DC.

Estimated number of respondents: 1,000.

Estimated time per response: 10 minutes.

Frequency of response: Once per respondent.

Estimated total annual burden hours: 167 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to (1) provide baseline data concerning the effectiveness of the National Archives Research Center's program which is aimed largely at genealogists and family historians, (2) measure customer satisfaction with the National Archives Research Center, and (3) identify additional opportunities for improving the customers' experience.

2. *Title:* Forms Relating to Civilian Service Records.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 32,060.

Estimated time per response: 5 Minutes.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 2,671 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

3. *Title:* National Personnel Records Center (NPRC) Survey of Customer Satisfaction.

OMB number: 3095–0042.

Agency form number: N/A.

Type of review: Regular.

Affected public: Federal, state and local government agencies, veterans, and individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: 1,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: 167 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) determine customer satisfaction with MPR's reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: December 21, 2005.

Martha Morphy,

Acting Assistant Archivist for Information Services.

[FR Doc. E5–8235 Filed 1–3–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before February 3, 2005 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on September 23, 2005 (70 FR 55925 and 55926). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Forms Relating to Military Service Records.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the

National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: December 21, 2005.

Martha Morphy,

Acting Assistant Archivist for Information Services.

[FR Doc. E5–8236 Filed 1–3–06; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* January 6, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

2. *Date:* January 9, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

3. *Date:* January 10, 2006.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Grants for Teaching and Learning Resources and Curriculum Development, submitted to the Division of Education Programs at the October 14, 2005 deadline.

4. *Date:* January 10, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

5. *Date:* January 13, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

6. *Date:* January 18, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

7. *Date:* January 23, 2006.
Time: 8:30 a.m. to 5:30 p.m.
Room: 420.
Program: This meeting will review applications for Research Initiatives, submitted to the Office of Challenge Grants at the November 1, 2005 deadline.

8. *Date:* January 24, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: LJ 113—Library of Congress.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the August 15, 2005 deadline.

9. *Date:* January 25, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Philosophy, Science, and Religion, submitted to the Division of Research Programs at the November 1, 2005 deadline.

10. *Date:* January 26, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: LJ 113—Library of Congress.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the August 15, 2005 deadline.

11. *Date:* January 27, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Americas, submitted to the Division of Research Programs at the November 1, 2005 deadline.

12. *Date:* January 27, 2006.
Time: 8:30 a.m. to 5:30 p.m.

Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the November 3, 2005 deadline.

13. *Date:* January 30, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Collaborative Research in Archaeology, submitted to the Division of Research Programs at the November 1, 2005 deadline.

14. *Date:* January 31, 2006.
Time: 8:30 a.m. to 5 p.m.
Room: LJ 113—Library of Congress.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the August 15, 2005 deadline.

15. *Date:* January 31, 2006.
Time: 9 a.m. to 5:30 p.m.
Room: 420.
Program: This meeting will review applications for Art Museums and Other Cultural Organizations, submitted to the Office of Challenge Grants at the November 1, 2005 deadline.

Michael McDonald,

Advisory Committee Management Officer.

[FR Doc. E5–8279 Filed 1–3–06; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks January 2, 9, 16, 23, 30, February 6, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of January 2, 2006

There are no meetings scheduled for the Week of January 2, 2006.

Week of January 9, 2006

Tuesday, January 10, 2006

9:30 a.m. Briefing on International Research and Bilateral Agreements (Public Meeting). (Contact: Roman Shaffer, 301–415–7605).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, January 11, 2006

1:55 p.m Affirmation Session (Public Meeting) (Tentative). a. Hydro Resources, Inc. (Crownpoint, New Mexico) Petition for Review of LBP–05–17 (Groundwater Issues) (Tentative).

2 p.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, January 12 2006

9:30 a.m. Discussion of Security Issues (Closed—Ex. 2 & 3).

Week of January 16, 2006—Tentative

Tuesday, January 17, 2006

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of January 23, 2006—Tentative

There are no meetings scheduled for the Week of January 23, 2006.

Week of January 30, 2006—Tentative

Tuesday, January 31, 2006

9:30 a.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2).

Wednesday, February 1, 2006

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of February 6, 2006—Tentative

Monday, February 6, 2006

9:30 a.m. Briefing on Materials Degradation Issues and Fuel Reliability (Public Meeting). (Contact: Jennifer Uhle, 301–415–6200).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, February 8, 2006

9:30 a.m. Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS). Programs, Performance, and Plans—Materials Safety (Public Meeting). (Contact: Teresa Mixon, 301–415–7474).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Office of Research (RES) Programs, Performance and Plans (Public Meeting) (Contact: Gene Carpenter, 301–415–7333).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. Braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

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This notice is distribute by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 29, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–24704 Filed 12–30–05; 12:42 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Proposed Bulletin for Good Guidance Practices

AGENCY: Office of Management and Budget.

ACTION: Notice of proposed guidelines and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is extending the comment period regarding its draft Bulletin for Good Guidance Practices from December 2, 2005, to January 9, 2006. This Bulletin is intended to increase the quality and transparency of agency guidance practices and the guidance documents produced through them.

DATES: Written comments regarding OMB's Proposed Bulletin for Good Guidance Practices are due by January 9, 2006.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail,

respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *OMB_GGP@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments also may be submitted via facsimile to (202) 395–7245.

FOR FURTHER INFORMATION CONTACT: Lisa Jones, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 9013, Washington, DC 20503. Telephone (202) 395–5897.

SUPPLEMENTARY INFORMATION: OMB is seeking comments on its Proposed Bulletin for Good Guidance Practices by January 9, 2006. The draft Bulletin for Good Guidance Practices is posted on OMB's Web site, *http://www.whitehouse.gov/omb/inforeg/regpol.html.* This draft Bulletin provides a definition of guidance; describes the legal effect of guidance documents establishes practices for developing guidance documents and receiving public input; and establishes ways for making guidance documents available to the public.

Dated: December 19, 2005.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 06–32 Filed 1–3–06; 8:45 am]

BILLING CODE 3110–01–M

RAILROAD RETIREMENT BOARD

Notification of Meeting

The Railroad Retirement board heredby gives notice that the Board will meet at 9 a.m., December 29, 2005, in the Board Room on the 8th floor of the agency's headquarters building located at 844 N. Rush Street, Chicago, Illinois. A majority of the Board, by recorded vote, has determined that agency business requires the scheduling of this meeting with less than one week notice. The subject to be addressed at this meeting is a discussion of issues relating to the pending procurement, the section of a contractor and the request for dunding approval to implement Phase I of the Field Office Study.

The entire meeting will be closed to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: December 28, 2005.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 06–14 Filed 1–3–06; 8:45 am]

BILLING CODE 7901–05–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2469/803–181]

Greenhouse Associates, LLC and Superior Partners, LP; Notice of Application

December 28, 2005.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act" or "Act").

APPLICANT: Greenhouse Associates, LLC ("Greenhouse") and Superior Partners LP ("Superior") (collectively, "Applicants").

RELEVANT ADVISERS ACT SECTIONS: Exemption requested under section 205(e) of the Advisers Act from section 205(a)(1) of that Act.

SUMMARY OF APPLICATION: Applicants request an order under section 205(e) of the Advisers Act to permit registered investment advisers to charge each of the Applicants performance-based advisory fees notwithstanding the prohibition set forth in section 205(a)(1) of the Act.

FILING DATES: The application was filed on February 16, 2005, and amended on December 8, 2005.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving each of the Applicants with a copy of the request, either personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on January 20, 2006, and should be accompanied by proof of service on each of the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: SEC: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants: (1) Greenhouse: Greenhouse Associates, LLC, c/o Dudley & Shanley, LLC, 130 Maple Avenue, Suite EB–2, Red Bank, NJ 07701–1735; (2) Superior: Superior Partners, LP, c/o Dudley & Shanley, LLC, 130 Maple Avenue, Suite EB–2, Red Bank, NJ 07701–1735.

FOR FURTHER INFORMATION CONTACT: Jamey Basham, Branch Chief, Division of Investment Management, Office of Investment Adviser Regulation, at (202) 551–6787.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Greenhouse is a Delaware limited liability company operating as a private investment company exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 ("Investment Company Act").[1] Greenhouse represents that it serves in essence as a family investment vehicle to manage, facilitate, and simplify the investments of family members and their trusts and custodial arrangements. The twelve current members of Greenhouse ("Current Greenhouse Members") are (i) Henry C. Dudley ("Mr. Dudley"); (ii) Mr. Dudley's mother and two sisters; (iii) a trust for the benefit of Mr. Dudley's mother; (iv) six custodial arrangements (under the Uniform Transfers to Minors Act) for the exclusive benefit of one or more of the lineal descendants of Mr. Dudley or his sisters; and (v) Frank E. Shanley ("Mr. Shanley"). Greenhouse represents that it may admit new members in the future, but that future members ("Future Greenhouse Members") will be limited to (a) lineal descendants of Mr. Dudley's mother (including Mr. Dudley and his two sisters) and spouses of such descendents; (b) lineal descendants of Mr. Shanley and spouses of such descendents; (c) trusts and custodial arrangements exclusively for the benefit of family members described in (a) and (b); (d) partnerships or other entities owned exclusively by family members described in (a) and (b) or the entities described in (c); and (v) charitable foundations and organizations controlled exclusively by family

[1] 15 U.S.C. 80a–3(c)(1). Section 3(c)(1) generally excepts from the definition of investment company under the Investment Company Act any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities.

members described in (a) and (b) or the entities described in (c).

2. Mr. Dudley and Mr. Shanley are the sole Managers of Greenhouse. Greenhouse has no executives or employees. Greenhouse represents that Mr. Dudley and Mr. Shanley are solely responsible for all investment decisions for the Greenhouse portfolio, as well as all aspects of the business and administration of Greenhouse. Mr. Dudley and Mr. Shanley have retained, under this authority, their investment firm, Dudley & Shanley, LLC (D&S), to perform these functions. Mr. Dudley and Mr. Shanley are the sole co-owners and principals of D&S, perform these functions personally, and have not delegated them to other D&S employees, with the exception that other D&S employees assist them with certain ministerial duties.

3. Greenhouse pays D&S an annual management fee equal to 0.5% of Greenhouse's net asset value. Greenhouse represents that the management fee is intended to reimburse D&S' costs incurred in rendering services to Greenhouse and not to provide D&S, Mr. Dudley or Mr. Shanley with a profit. Greenhouse does not otherwise reimburse D&S, Mr. Dudley or Mr. Shanley for their expenses incurred in connection with managing the fund.

4. Mr. Dudley and Mr. Shanley are also entitled to performance-based advisory compensation from Greenhouse, consisting of an annual performance reallocation to their membership interests in Greenhouse. This performance reallocation equals ten percent of all Greenhouse members' net gain in excess of a "high water mark" (that is, the highest level of cumulative net gain for preceding periods). However, in making this performance reallocation, Greenhouse excludes its members that are not "qualified clients" as defined in rule 205–3 under the Advisers Act,[2] so that such non-qualified clients are not charged performance-based compensation.

5. Greenhouse states that it currently invests in other private investment companies whose investment advisers are not affiliated in any way with either Mr. Dudley or Mr. Shanley ("Greenhouse Third Party Funds"), and that the managers of some of these Greenhouse Third Party Funds charge their investors performance-based compensation. Greenhouse also states that it may in the future identify other desirable Greenhouse Third Party Funds in which Greenhouse wishes to invest, and which are managed by investment advisers who charge performance-based compensation. Greenhouse believes that many of the investment advisers managing these Greenhouse Third Party Funds will soon become subject to the performance-based compensation restrictions of section 205(a)(1) of the Advisers Act,[3] and will accordingly look to Advisers Act rule 205–3 to continue charging performance-based compensation, as discussed below. Greenhouse therefore seeks relief that will allow it to invest in Greenhouse Third Party Funds notwithstanding the fact that some of Greenhouse's members are not "qualified clients" as required by rule 205–3.

6. Mr. Dudley and Mr. Shanley are both "qualified clients" for purposes of rule 205–3, as are four other Current Greenhouse Members. The six other Current Greenhouse Members do not meet the definition of a qualified client. Greenhouse may admit Future Greenhouse Members that may not be qualified clients.

7. Superior is a Delaware limited partnership operating as a private investment company exempt from registration under section 3(c)(1) of the Investment Company Act. Superior was formed in 1978 by descendents of Chester A. Congdon, Mr. Dudley's great-grandfather, to manage for their benefit assets distributed to them from the Congdon estate. The current partners of Superior ("Current Superior Partners") are all (i) Lineal descendents of Chester A. Congdon and spouses of such descendents; (ii) trusts exclusively for the benefit of lineal descendants of Chester A. Congdon; and (iii) entities owned exclusively by lineal descendents of Chester A. Congdon and their spouses. Superior represents that it may admit new partners in the future, but that future partners ("Future Superior Partners") will be limited to (a) lineal descendents of Chester A. Congdon and spouses and adopted children of such descendents; (b) personal representatives (such as executors) of family members described in (a); (c) trusts and custodial arrangements exclusively for the benefit of family members described in (a); and (d) entities owned exclusively by or established for the exclusive benefit of any of the foregoing.

8. The Current Superior Partners include four Managing General Partners who manage Superior: Mr. Dudley, Thomas E. Congdon, John P. Congdon, and Charles W. D'Autremont. Superior also has 13 other general partners; however, their status as general partners relates to historical family considerations, and no general partners other than the Managing General Partners participate in the administration or management of the partnership. Superior has no executives or employees. Superior's Limited Partnership Agreement authorizes the Managing General Partners to retain an investment manager and administrative agent, and the Managing General Partners have delegated their management responsibilities to D&S pursuant to this authority. Mr. Dudley and Mr. Shanley, as the sole co-owners and principals of D&S, perform all aspects of the administration and investment management of Superior personally and have not delegated them to other D&S employees, with the exception that other D&S employees assist them with certain ministerial duties. Mr. Dudley and Mr. Shanley consult with individual Managing General Partners regularly and meet with them as a group from time to time.

9. Superior pays D&S an annual management fee equal to 0.5% of Superior's net asset value, as well as an administrative services fee equal to 0.1% of such net asset value. Superior represents that these fees are intended to reimburse D&S' costs incurred in rendering services to Superior and not to provide D&S, Mr. Dudley or Mr. Shanley with a profit. Superior does not otherwise reimburse D&S, Mr. Dudley or Mr. Shanley for their expenses incurred in connection with managing Superior. Superior does not compensate its Managing General Partners and does not reimburse the Managing General Partners for any expenses incurred with respect to their responsibilities towards Superior, with the exception of travel expenses to any meetings of the Managing General Partners. Superior pays no performance-related fees to D&S, Mr. Dudley, Mr. Shanley, or the Managing General Partners.

10. Superior states that it currently invests in other private investment companies whose investment advisers are not affiliated in any way with either Mr. Dudley or Mr. Shanley, or with the Managing General Partners ("Superior Third Party Funds"), and that the managers of some of these Superior Third Party Funds charge their investors performance-based compensation. Superior also states that it may in the future identify other desirable Superior Third Party Funds in which Superior wishes to invest, and which are managed by investment advisers who charge performance-based compensation. Superior believes that many of the investment advisers managing these Superior Third Party

[2] 17 CFR 275.205–3.

[3] 15 U.S.C. 80b–5(a)(1).

Funds will soon become subject to the performance-based compensation restrictions of section 205(a)(1) of the Advisers Act, and will accordingly look to Advisers Act rule 205–3 to continue charging performance-based compensation, as discussed below. Superior therefore seeks relief that will allow it to invest in Superior Third Party Funds notwithstanding the fact that some of Superior's partners are not "qualified clients" as required by rule 205–3.

11. Superior's four Managing General Partners are all "qualified clients" for purposes of rule 205–3, as are 32 other Current Superior Partners. The 23 other Current Superior Partners do not meet the definition of a qualified client. Superior may admit Future Superior Partners that may not be qualified clients.

Applicants' Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered investment adviser, unless exempt from registration pursuant to section 203(b) of the Act, from entering into, extending, renewing, or performing under any investment advisory contract that provides for compensation based upon "a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client," commonly referred to as performance-based compensation or a performance fee.

2. Rule 205–3 under the Act provides an exemption from the prohibition in section 205(a)(1), provided each client entering into an investment advisory contract that provides for performance-based compensation is a "qualified client." Under rule 205–3(b), each equity owner of a "private investment company" is considered a client for purposes of rule 205–3(a).[4] Applicants assert that Greenhouse and Superior are private investment companies.

3. Because a number of the Current Greenhouse Members and Current Superior Partners are not qualified clients, Applicants may not be treated as meeting the requirements of rule 205–3(a).

4. Applicants request an order under section 205(e) of the Advisers Act granting an exemption from section 205(a)(1) of the Act so as to permit registered investment advisers to charge Applicants performance-related compensation. Applicants ask that the relief requested be applicable to Current Greenhouse Members and Current Superior Partners that are not qualified clients, as well as to Future Greenhouse Members and Future Superior Partners that are not qualified clients.

5. Section 205(e) of the Advisers Act provides that the Commission, by order upon application, may exempt any person, or any class or classes of persons, from section 205(a)(1) of the Act, if and to the extent that the exemption relates to an investment advisory contract with any person that the Commission determines does not need the protection of section 205(a)(1), on the basis of such factors as financial sophistication, net worth, knowledge of and experience in financial matters, and such other factors as the Commission determines are consistent with section 205.

6. Applicants assert that exemptive relief to permit Greenhouse and Superior to be charged performance-based compensation is appropriate and consistent with the purposes of 205(a)(1) of the Advisers Act. Applicants assert that the request for relief complies with the factors specified in section 205(e) of the Act. Applicants state that Mr. Dudley and Mr. Shanley, the investment decision-makers for Applicants, are qualified clients meeting the net worth requirement of rule 205–3(d)(1)(ii)(A) under the Act. Superior further asserts that each of its Managing General Partners with whom Mr. Dudley and Mr. Shanley periodically consult is a qualified client. Applicants assert that Mr. Dudley and Mr. Shanley are financially sophisticated, with substantial knowledge of and long experience in financial matters, (particularly those pertinent to investing in private investment companies), and are accordingly fully able to assess the potential risks of performance-related compensation. Superior further asserts that each of its Managing General Partners with whom Mr. Dudley and Mr. Shanley periodically consult is equally financially sophisticated, with similar knowledge and expertise, and are similarly able to asses the risk of performance-related compensation.

7. Applicants further assert that Mr. Dudley and each of Superior's Managing General Partners with whom Mr. Dudley and Mr. Shanley periodically consult have strong familial relationships with Current Greenhouse Members, Current Superior Partners, Future Greenhouse Members, and Future Superior Partners that are not qualified clients (or with the beneficiaries of the trust and custodial arrangements that are or will be such members or partners). Applicants also assert that Mr. Shanley has had a long business and social relationship with many members of the Dudley and Congdon families, and is a trustee of a number of trusts established for the Dudley family. In addition, applicants assert that Mr. Dudley, Mr. Shanley, and each of Superior's Managing General Partners with whom Mr. Dudley and Mr. Shanley periodically consult have made substantial personal investments in Applicants. Applicants assert these factors will cause Mr. Dudley, Mr. Shanley, and each of Superior's Managing General Partners with whom Mr. Dudley and Mr. Shanley periodically consult to act in the best interests of Applicants' members and partners.

8. Applicants further assert with respect to trusts and custodial arrangements that are Current Greenhouse Members and Current Superior Partners and are not qualified clients, the trustees and custodians are each qualified clients and, in many cases, are parents or other close family relations of the beneficiaries of those trusts and custodial arrangements who themselves have substantial personal investments in Applicants.

For the SEC, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E5–8246 Filed 1–3–06; 8:45 am]

BILLING CODE 8010–01–P

[4] Under rule 205–3(d)(3), a private investment company is a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53027; File No. SR–NASD–2005–117]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Seeking Permanent Approval of Rules Concerning Bond Mutual Fund Volatility Ratings Prior to Expiration of Pilot

December 27, 2005.

I. Introduction

On September 28, 2005 and October 24, 2005 (Amendment No. 1),[1] the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities

[1] Amendment No. 1 clarified the date of expiration of the pilot program concerning bond mutual fund volatility ratings.

Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change seeking permanent approval of NASD Rule 2210(c)(3) and Interpretive Material 2210–5 (collectively, the "Rule") concerning bond mutual fund volatility ratings prior to the expiration of the pilot on December 29, 2005. The Commission published the proposed rule change for comment in the **Federal Register** on November 7, 2005.[4] The Commission received one comment letter on the proposal.[5] On December 16, 2005, NASD filed a response to the comment letter.[6] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Background and Description of NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved on a pilot basis NASD Interpretive Material 2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[7] At that time, the SEC also approved as a pilot NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide to investors through a toll-free telephone number or web site (or both) a detailed disclosure on its rating methodology.
- A disclosure statement containing all of the information required by the Rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file for approval with NASD's Advertising Regulation Department ("Department"), at least 10 days prior to use, bond mutual fund sales literature that includes or incorporates volatility ratings. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

IM–2210–5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.[8] NASD subsequently renewed the pilot several times, most recently with a proposed rule change that was effective upon filing and extended the pilot provisions until December 29, 2005.[9]

Proposed Rule Change to Make Permanent IM–2110–5 and Rule 2210(c)(3)

As indicated in the SEC's original order approving IM–2210–5 and Rule 2210(c)(3) on a pilot basis and the NASD Notice to Members announcing such approval,[10] NASD requested the 18-month pilot period to consider whether:

- The Rule has facilitated the dissemination of useful, understandable information to investors;
- The Rule has prevented the dissemination of inappropriate or misleading information by members and associated persons;
- Additional guidance concerning the use of certain terminology may be necessary;
- The Rule should apply to in-house ratings;
- The Rule should apply to all investment companies; and
- Additional standards or guidance is needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

Due to the small number of bond volatility ratings filings received during the Rule's initial 18-month pilot, NASD extended the pilot to accumulate more data with which to evaluate the program. Ultimately, during the entire period from February 2000, when the Rule was first approved, until September 2005 (when NASD initially filed this proposed rule change with the Commission), NASD received a total of 47 submissions from seven NASD members. In general, the filings of sales material that contained bond fund volatility ratings have met the Rule's requirements.

Based on its findings during this period, NASD has concluded that the Rule's provisions are appropriate and do not require further amendment before being made permanent. In particular, NASD believes that the Rule has facilitated the dissemination of useful and understandable information to investors and has prevented the dissemination of inappropriate or misleading information. In this regard, virtually all of the filings NASD has received under the Rule have met the Rule's requirements, and NASD is not aware of any investor complaints concerning sales material that contains volatility ratings. The level of member compliance with the Rule also suggests that members do not require additional guidance concerning the use of certain terminology in the Rule. Similarly, NASD is not aware of any concerns that investors may be confused or that there may be excessive variability among ratings or similar portfolios.

NASD also has examined the issue of whether the Rule should apply to in-house ratings. At the time the Rule was approved, NASD observed that the Rule should not apply to in-house ratings on the grounds that they are not procured for a fee, are used primarily by fund investors as an aid in distinguishing between risk levels within a family of funds, and may be calculated using different methods from those used in calculating volatility ratings.[11] NASD continues to believe that those are persuasive reasons to not apply the Rule to in-house ratings. NASD believes that in-house ratings do not raise the same

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[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 52709 (November 1, 2005), 70 FR 67509 (November 7, 2005) (the "Notice").

[5] *See* letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute ("ICI") to Jonathan G. Katz, Secretary, SEC, dated November 28, 2005 (the "ICI Letter").

[6] *See* letter from Joseph P. Savage, Associate Vice President, Investment Companies Regulation, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 16, 2005 (the "NASD Response").

[7] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 52372 (Aug. 31, 2005); 70 FR 53405 (Sept. 8, 2005) (SR–NASD–2005–104); Securities Exchange Act Release No. 48353 (Aug. 15, 2003); 68 FR 50568 (Aug. 21, 2003) (SR–NASD–2003–126); NASD Notice to Members 03–48 (Aug. 2003); Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR–NASD–2001–49); NASD Notice to Members 01–58 (Sept. 2001).

[10] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89); NASD Notice to Members 00–23 (April 2000).

[11] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

concerns as third-party ratings, and thus do not merit application of the bond fund volatility ratings rule.

NASD also believes that it is unnecessary at this time to apply the Rule to other types of investment companies, such as unit investment trusts. At no time throughout the extended pilot period has a member requested that the Rule apply to such material, and NASD is not aware of third-party volatility ratings that are being used to assess other types of investment companies. Accordingly, NASD sees no need to expand the Rule's scope in this manner.

NASD believes that the Rule strikes an appropriate balance between the desire of some funds to advertise volatility ratings and the need to include appropriate disclosures related to those ratings in sales material. Accordingly, NASD believes that the Commission should approve the Rule, as is, on a permanent basis.

IM–2210–5(b)(2) requires supplemental sales literature that includes bond fund volatility ratings to present the most recently available rating that "reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use." At the time IM–2210–5 was adopted, this standard mirrored the timeliness standard for mutual fund performance advertising under Rule 482 under the Securities Act of 1933. However, in 2003, the SEC amended Rule 482 to require mutual fund performance advertising to show performance that is current to the most recent calendar quarter ended prior to submission of an advertisement for publication, and to indicate where the reader may obtain performance that is current to the most recent month ended seven business days prior to use through a toll-free (or collect) telephone number or web site, or to present performance that meets this most recent month-end standard.[12]

NASD understands that rating agencies typically monitor bond funds on a monthly basis, but that it is quite rare for such agencies to revise a volatility rating on a month-to-month basis. Accordingly, NASD does not believe that it is necessary to require that volatility ratings be current as of the most recent month end given that, among other things, unlike fund performance, such ratings do not frequently change once they are issued.

[12] Rule 482(g) under the Securities Act of 1933.

III. Summary of Comments Received and NASD Response

The Commission received one comment letter from ICI on the proposal and a response to the comment letter by NASD.

The ICI Letter generally expressed reservations about the use of bond mutual fund volatility ratings in supplemental sales literature.[13] The ICI Letter also suggested that if the pilot program was approved on a permanent basis that: (i) All of the critical investor protections of the original pilot program should remain intact, (ii) the use of a single symbol, number or letter to describe a volatility rating should be prohibited and (iii) the timeliness requirements of IM–2210–5(b)(2) should be modified to mirror the requirements of Rule 482 under the Securities Act of 1933.[14]

In response to ICI's general reservations regarding the use of bond mutual fund volatility ratings the NASD Response stated that "during the five and one-half years that the [bond mutual fund volatility rules] have been in effect, NASD has found no evidence that the use of volatility ratings in fund sales literature has harmed investors."[15] NASD also noted that it "has not proposed to eliminate any of the disclosure, filing or other investor protection requirements that were contained in the original pilot rule."[16]

In addition, NASD expressed doubt that use of a single symbol, number or letter to describe volatility ratings harms investors, stating "NASD fails to see how allowing the use of symbols, numbers and letters to describe a fund's volatility rating is any more harmful to investors than allowing symbols, numbers and letters to describe a fund's performance or performance ranking."[17]

Furthermore, NASD disagreed with ICI's recommendation to modify the timeliness requirements of IM–2210–5(b)(2).[18] NASD indicated that "it is quite rare for [fund rating] agencies to revise a volatility rating on a month-to-month basis." Accordingly, NASD expressed its belief that it is not necessary "to require that volatility ratings be current as of the most recent month end given that such ratings rarely change once they are issued."[19] NASD, however, cautioned its members that a "member may not distribute supplemental sales literature containing a bond fund volatility rating if the member knows or has reason to know that the rating is false or misleading, even if the rating was current as of the most recent calendar quarter end."[20]

[13] ICI Letter, *supra* note 5, at 1.

[14] *Id.* at 1–2.

[15] NASD Response, *supra* note 6, at 2.

[16] *Id.*

[17] *Id.* at 3.

[18] *Id.*

[19] *Id.*

IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that making IM–2210–5 and Rule 2210(c)(3) effective on a permanent basis will protect investors and the public interest by permitting NASD members to provide investors with useful information in a manner designed to prevent dissemination of inappropriate or misleading information.

V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change, as amended (SR–NASD–2005–117), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Nancy M. Morris,

Secretary.

[FR Doc. E5–8228 Filed 1–3–06; 8:45 am]

BILLING CODE 8010–01–P

[20] *Id. See also* NASD Rule 2210(d)(1)(B).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53026; File No. SR–NASD–2005–152]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Relating to Manning Price-Improvement Standards for Decimals

December 27, 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 December 23, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 NASD. NASD filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] therefore making the proposed rule change effective immediately upon filing. NASD intends for this rule change to become operative on January 1, 2006. 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 through June 30, 2006, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110–2—Trading Ahead of Customer Limit Order ("Manning Rule" or "Manning"). There are no proposed changes to the rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

NASD's Manning Rule requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Rule.

On April 6, 2001,[5] the Commission approved, on a pilot basis, price-improvement standards for decimalized securities contained in Manning, which added the following language to IM–2110–2:

> For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a market maker to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:
>
> (1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and
>
> (2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[6]

Since approval, these standards continue to operate on a pilot basis which terminates on December 31, 2005.[7] After consultation with Commission staff, NASD has determined to seek an extension of its current Manning pilot until June 30, 2006. NASD believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission continues to analyze the issues related to customer limit order protection in a decimalized environment. NASD is not proposing any other changes to the pilot at this time. NASD proposes to make the proposed rule change operative on January 1, 2006.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(6) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve treatment of customer limit orders and enhance the integrity of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD 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

This proposal has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder [11] because the proposal: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[12] NASD has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately. NASD intends for the rule to become operative on January 1, 2006.

The Commission hereby grants the request.[13] The Commission believes that such waiver is consistent with the

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001).

[6] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rounded to the nearest minimum quotation increment (namely, $0.01), specifically, rounded down for buy orders and rounded up for sell orders. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[7] *See* Securities Exchange Act Release No. 51953 (June 30, 2005), 70 FR 39839 (July 11, 2005).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] Pursuant to Rule 19b–4(f)(6)(iii) of the Act, a proposed rule change does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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. NASD complied with the five day pre-filing requirement.

[13] For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption.

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–2005–152 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–152. 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 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 the File Number SR–NASD–2005–152 and should be submitted on or before January 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E5–8229 Filed 1–3–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to iWatt, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizons Ventures Fund I, L.P. and Horizons Ventures Advisors Fund I, L.P., all Associates of Horizon Ventures Fund II, L.P., own more than ten percent of iWatt, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 19, 2005.

Jaime Guzmán-Fournier,

Associate Administrator for Investment.

[FR Doc. E5–8249 Filed 1–3–06; 8:45 am]

BILLING CODE 8025–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–68]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 28, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2005–22385.

Petitioner: The Boeing Company.

Sections of 14 CFR Affected: 14 CFR 25.1447(c)(1).

Description of Relief Sought/Disposition: To allow relief from the requirement for passenger oxygen masks to be automatically presented before the cabin pressure altitude exceeds 15,000 feet for the Boeing Model 737NG aircraft. *Grant of Exemption, 12/02/2005, Exemption No. 8668.*

Docket No.: FAA–2005–22961

Petitioner: Mr. Joseph Weisbrod .

Sections of 14 CFR Affected: 4 CFR 65.104(a)(2).

Description of Relief Sought/Disposition: To allow Mr. Joseph Weisbrod to apply for a repairman certificate for a Cassutt IIIM aircraft when the repairman certificate for this aircraft had been issued to the aircraft's co-builder. *Grant of Exemption, 12/02/2005, Exemption No. 8669.*

Docket No.: FAA–2001–10475.
Petitioner: Air Transport Association of America, Inc.
Sections of 14 CFR Affected: 14 CFR 45.11(a) and (d), 91.417(d), and paragraph (d) of appendix B to part 43.
Description of Relief Sought/Disposition: To allow certain aircraft to be operated without complying with the requirements pertaining to (1) the location of the aircraft identification plates and (2) carriage of the Federal Aviation Administration Form 337 as evidence of installation approval for fuel tank installations in the passenger or baggage compartment. *Grant of Exemption, 12/07/2005, Exemption No. 4902J.*

Docket No.: FAA–2005–21913.
Petitioner: Professional Aviation Maintenance Association.
Sections of 14 CFR Affected: 14 CFR 65.93(a).
Description of Relief Sought/Disposition: To allow attendees of the annual Professional Aviation Maintenance Association Convention an extra 15 days to submit evidence of compliance with part 65.91(c)(1) through (4) for renewal of their Inspection Authorization. *Denial of Exemption, 12/08/2005, Exemption No. 8670.*

Docket No.: FAA–2005–22555.
Petitioner: Gulfstream Aerospace Corporation.
Sections of 14 CFR Affected: 14 CFR 21.231(a)(1).
Description of Relief Sought/Disposition: To allow Gulfstream to apply for Delegation Option Authorization for type, production, and airworthiness certification of transport category airplanes. *Grant of Exemption, 12/08/2005, Exemption No. 8671.*

Docket No.: FAA–2001–10283.
Petitioner: Butler Aircraft/TBM, Inc.
Sections of 14 CFR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/Disposition: To allow Butler Aircraft/TBM, Inc., to operate its Boeing Douglas DC–6 and DC–7 airplanes without a flight engineer during flightcrew training, ferry operations, and test flights that are conducted to prepare for firefighting operations. *Grant of Exemption, 12/13/2005, Exemption No. 2989M.*

Docket No.: FAA–2002–11499.
Petitioner: Mr. Randy L. Bailey.
Sections of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/Disposition: To allow Mr. Randy L. Bailey to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant of Exemption, 12/13/2005, Exemption No. 7734B.*

Docket No.: FAA–2003–16561.
Petitioner: Wings Airways.
Sections of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/Disposition: To allow Wings Airways to operate under visual flight rules outside controlled airspace over water at an altitude below 500 feet. *Grant of Exemption, 12/13/2005, Exemption No. 8185A.*

Docket No.: FAA–2001–10605.
Petitioner: United Air Lines, Inc.
Sections of 14 CFR Affected: 14 CFR 121.440(a) and Special Federal Aviation Regulation 58, paragraph 6(b)(3)(ii)(A).
Description of Relief Sought/Disposition: To allow United Air Lines, Inc. to meet line check requirements using an alternative line check program. *Grant of Exemption, 12/13/2005, Exemption No. 3451O.*

Docket No.: FAA–2002–13581.
Petitioner: TransNorthern LLC.
Sections of 14 CFR Affected: 14 CFR 43.3(a), 43.3(g), 121.709(b)(3), and 135.443(b)(3).
Description of Relief Sought/Disposition: To allow certificated and appropriately trained pilots employed by TransNorthern LLC to remove and reinstall passenger seats. *Grant of Exemption, 12/19/2005, Exemption No. 8233A.*

[FR Doc. E5–8266 Filed 1–3–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–66]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, *Code of Federal Regulations* (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 28, 2005.

Anthony F. Fazio,
Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2005–21814.
Petitioner: Redline Air Service.
Sections of 14 CFR Affected: 14 CFR 43.3.
Description of Relief Sought/Disposition: To allow pilots employed by Redline Air Service to perform engine oil and engine oil filter changes on their part 135 airplanes. *Denial of Exemption, 11/18/2005, Exemption No. 8665.*

Docket No.: FAA–2001–8750.
Petitioner: Community College of the Air Force.
Sections of 14 CFR Affected: 14 CFR 147.31(c)(2)(iii).
Description of Relief Sought/Disposition: To allow U. S. Air Force aviation maintenance technicians who have completed military aviation maintenance training courses to be evaluated using the same criteria used for the civilian sector. *Grant of Exemption, 11/05/2005, Exemption No. 8251A.*

Docket No.: FAA–2002–11285.
Petitioner: Commemorative Air Force.
Sections of 14 CFR Affected: 14 CFR 91.315, 91.319(a), 119.5(g), and 119.25(b).
Description of Relief Sought/Disposition: To allow Commemorative Air Force to operate certain aircraft for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant of Exemption, 11/30/2005, Exemption No. 6802E.*

Docket No.: FAA–2001–11090.
Petitioner: Army Aviation Heritage Foundation.
Sections of 14 CFR Affected: 14 CFR 91.319, 119.5(g), and 119.25(b).
Description of Relief Sought/Disposition: To allow the Army Aviation Heritage Foundation to operate over other than congested areas with the minimum ceiling and visibility required for flight in class C and D airspace.

Grant of Exemption, 11/30/2005, Exemption No. 7736D.

Docket No.: FAA–2003–16625.
Petitioner: Wings of Alaska.
Sections of 14 CFR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To allow Wings of Alaska to operate under visual flight rules outside of controlled airspace over water at an altitude below 500 feet. *Grant of Exemption, 11/29/2005, Exemption No. 8242A.*

Docket No.: FAA–2005–22664.
Petitioner: Bell Helicopter.
Sections of 14 CFR Affected: 14 CFR 91.9(b)(1) and (2), and 91.203(b).
Description of Relief Sought/ Disposition: To allow Bell Helicopter to operate unmanned aerial vehicles that do not carry and display the aircraft airworthiness, certification, and registration documents required in part 91. *Grant of Exemption, 11/29/2005, Exemption No. 8667.*

Docket No.: FAA–2000–8468.
Petitioner: Yankee Air Force, Inc.
Sections of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To allow Yankee Air Force, Inc., to operate its North American B–25 and Boeing B–17 aircraft for the purpose of carrying passengers for compensation or hire on local flights for educational purposes. *Grant of Exemption, 11/25/2005, Exemption No. 6631F.*

Docket No.: FAA–2000–8528.
Petitioner: Popular Rotorcraft Association.
Sections of 14 CFR Affected: 14 CFR 91.319(a).
Description of Relief Sought/ Disposition:

To allow Popular Rotorcraft Association and its member flight instructors to operate an experimental category gyroplane and an ultralight gyroplane for the purpose of conducting flight training for compensation or hire. *Grant of Exemption, 11/25/2005, Exemption No. 5902K.*

Docket No.: FAA–2005–22224.
Petitioner: Centurion Air Cargo, Inc.
Sections of 14 CFR Affected: 14 CFR 121.344.
Description of Relief Sought/ Disposition: To allow Centurion Air Cargo, Inc., to operate a McDonnell Douglas DC–10 airplane with the required flight recorder parameters not fully operational. *Denial of Exemption, 11/21/2005, Exemption No. 8666.*

Docket No.: FAA–2004–19047.
Petitioner: Mr. James V. Ricks, Jr.
Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J.
Description of Relief Sought/ Disposition: To allow Mr. James V. Ricks, Jr., to conduct local sightseeing flights at the Greenwood-Leflore Airport, Greenwood, Mississippi, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant of Exemption, 11/18/2005, Exemption No. 8663.*

Docket No.: FAA–2005–22460.
Petitioner: Pomona Valley Pilots Association.
Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353.
Description of Relief Sought/ Disposition: To allow Pomona Valley Pilots Association to conduct local sightseeing flights at the Cable Airport, Upland, California, on January 7 and 8, 2006, for compensation or hire without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant of Exemption, 11/18/2005, Exemption No. 8664.*

Docket No.: FAA–2005–22820.
Petitioner: American Airlines, Inc.
Sections of 14 CFR Affected: 14 CFR 121.619.
Description of Relief Sought/ Disposition: To allow American Airlines, Inc., its certificated dispatchers, and its pilots in command to dispatch flights to domestic airports at which for at least 1-hour before and 1-hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation and visibility may be reduced from at least 3 statute miles to 1 statute mile. *Grant of Exemption, 11/15/2005, Exemption No. 8660.*

Docket No.: FAA–2005–22733.
Petitioner: NetJets, Inc.
Sections of 14 CFR Affected: 14 CFR 91.203(a) and (b) and 47.49.
Description of Relief Sought/ Disposition: To allow NetJets, Inc. to temporarily operate U.S.-registered aircraft in domestic operations without the registration or airworthiness certificates on board. *Grant of Exemption, 11/15/2005, Exemption No. 8662.*

Docket No.: FAA–2003–16038.
Petitioner: Southwest Airlines.
Sections of 14 CFR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).
Description of Relief Sought/ Disposition: To allow Southwest Airlines to conduct supplemental operations within the 48 contiguous United States and the District of Columbia using the flight regulations for alternate airports as required by part 121.619 and the fuel reserve regulations as required by part 121.639. *Grant of Exemption, 11/15/2005, Exemption No. 8238A.*

Docket No.: FAA–2005–22740.

Petitioner: Mr. Dale W. Hemman.

Sections of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).

Description of Relief Sought/ Disposition: To allow Mr. Dale W. Hemman to conduct certain flight training in certain Beechcraft airplanes that are equipped with a functioning throwover control wheel. *Grant of Exemption, 11/15/2005, Exemption No. 8661.*

Docket No.: FAA–2002–11578.

Petitioner: Northwest Seaplanes, Inc.

Sections of 14 CFR Affected: 14 CFR 135.203(a)(1).

Description of Relief Sought/ Disposition: To allow Northwest Seaplanes, Inc., to conduct operations outside controlled airspace, over water, at an altitude below 500 feet above the surface but not less than 200 feet above the surface. *Grant of Exemption, 11/15/2005, Exemption No. 6461F.*

Docket No.: FAA–2005–22716.

Petitioner: Capital Cargo International Airlines, Inc.

Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To allow Capital Cargo International Airlines, Inc., to substitute a qualified and authorized check airman in place of a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing certain duties when completing initial or upgrade training. *Grant of Exemption, 11/15/2005, Exemption No. 8659.*

Docket No.: FAA–2005–21606.

Petitioner: Kitty Hawk Aircargo, Inc.

Sections of 14 CFR Affected: 14 CFR 25.783(h), 25.807(g)(1), 25.810(a)(1), 25.813(b), 25.857(e) and 25.1447(c)(1).

Description of Relief Sought/ Disposition: To allow carriage of two non-crewmembers (commonly referred to as supernumeraries) in an area just aft and outside of the flightdeck. *Grant of Exemption, 11/4/2005, Exemption No. 8623.*

[FR Doc. E5–8267 Filed 1–3–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–65]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 24, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2005–23030] by any of the following methods:

Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

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

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Tim Adams (202) 267–8033, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Authority: This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 28, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–23030.

Petitioner: Czech Aircraft Works, S.R.O.

Section of 14 CFR Affected: 14 CFR 21.190.

Description of Relief Sought: Petitioner seeks an exemption permitting Czech Aircraft Works, S.R.O. to be issued a special airworthiness certificate in the light-sport category for its Mermaid aircraft. The petitioner requires this exemption because the Mermaid aircraft is an amphibious aircraft equipped with landing gear that can be retracted and extended while in flight. The FAA also seeks specific comments on the operation of this aircraft by sport pilots and the ability of such aircraft to withstand improper use of the landing gear, such as landing on water with the landing gear in the "down" position.

[FR Doc. E5–8268 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–05–23401]

Office of Injury Control Operations & Resources; Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 6, 2006.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ronald Filbert, NHTSA 400 Seventh Street, SW., 5125, NTI 200, Washington, DC 20590. Mr. Filbert's telephone number is (202) 366–2121. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 23 CFR Part 1313 Certificate Requirements for Section 410 Alcohol Impaired Driving Countermeasures.

OMB Control Number: 2127–0501.

Affected Public: State Government.
Form Number: NA.
Abstract: On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETE-LU) (23 U.S.C. 410), which amended the criteria to qualify for the Alcohol Impaired Driving Countermeasures program. The purpose of the grant program is to promote highway traffic safety by providing incentives to reduce impaired driving. It provides grant funds to States that adopt certain measures to prevent drinking and driving or meet certain performance measures. The program provides for a grant to States that have an alcohol fatality rate of 0.5 or less per 100 million vehicle miles traveled as of the date of the grant based on the most recent Fatality Analysis Reporting Systems (FARS) of NHTSA or a State must comply with specific programmatic criteria. Additionally, a State will receive funding if it is among the ten States with the highest impaired driving related fatalities using the most recent FARS. States that qualify for funds based on FARS data will only have to submit a certification to receive grants. To establish eligibility for the grants under programmatic criteria, a State must submit to NHTSA documentation demonstrating that it complies with sufficient criteria described in the rule. Much of the information required for the 410 application is already generated by the States as part of the development of their Section 402 Highway Safety Plan (HSP) or other ongoing impaired driving programs. To keep the reporting burden on the States to a minimum, all States prepare and submit their Section 410 plans, that indicate how they intend to use the grant funds, as part of their existing HSP. The required Highway Safety Program Cost Summary Form HS 217, OMB Clearance Number 2127–0003, is currently used by the States to comply with other highway safety grant programs.
Estimated Annual Burden: 2–45 hours per respondent per year.
Number of Respondents: All 50 states and the District of Columbia.
Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Marlene Markison,
Associate Administrator, Office of Injury Control Operations & Resources.
[FR Doc. 06–37 Filed 1–3–06; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34804]

Central Washington Railroad Company and Columbia Basin Railroad Company, Inc.—Modified Rail Certificate

On December 20, 2005, Central Washington Railroad Company (CWA) and Columbia Basin Railroad Company, Inc. (CBRW), Class III rail carriers, filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate a rail line extending between milepost 0.0, near Toppenish, and milepost 20.56, near White Swan, in Yakima County, WA.
In 1992, a petition for exemption to abandon the line was granted in *Washington Central Railroad Company, Inc.—Abandonment Exemption—In Yakima County, WA*, Docket No. AB–326X (ICC served Aug. 24, 1992). The State of Washington acquired the line pursuant to an offer of financial assistance in *Washington Central Railroad Company, Inc.—Abandonment Exemption—In Yakima County, WA, In the Matter of an Offer of Financial Assistance*, Docket No. AB–326X (ICC served Mar. 18, 1993), and the rail property was subsequently transferred to Yakima County. In 1994, the prior operator of the line received a modified rail certificate in *Yakima Valley Rail and Steam Museum Association, d/b/a Toppenish, Simcoe & Western Railroad—Modified Rail Certificate*, Finance Docket No. 32487 (ICC served Apr. 28, 1994). CWA and CBRW indicate that Yakima County has advised CWA that the termination of the lease agreement between Yakima County and the prior operator would be effective on December 21, 2005.
CWA and CBRW state that CBRW, as lessee, and Yakima County, as owner, have executed a lease agreement governing the subject line. CWA, an affiliate of CBRW, has assumed CBRW's rights and obligations under the agreement, but CBRW retains lessee obligations under the agreement. The parties anticipate that CWA will be the operator over the line but, because CBRW retains lessee obligations under the agreement, CBRW is also seeking authority to operate over the rail line pursuant to a modified certificate. CWA and CBRW state that CWA anticipated commencing freight rail operations over the subject line on or after December 21, 2005. According to CWA and CBRW, the initial term of the agreement is for 4 years, which may be extended, upon the occurrence of certain conditions, for an additional 11 years; the agreement may be terminated earlier upon the occurrence of certain events described in the agreement.
CWA and CBRW state that the line's only interline connection is with BNSF Railway Company (BNSF) at BNSF milepost 73.6 at Toppenish, WA.
The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).
CWA and CBRW indicate that: (1) There are no subsidizers; (2) there are no preconditions for shippers to meet to receive rail service; and (3) they have obtained liability insurance coverage.
This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.
Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 23, 2005.
By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.
[FR Doc. 06–9 Filed 1–3–06; 8:45 am]
BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34805]

Ispat Inland Holding Inc. (U.S.)—Acquisition of Control Exemption—ISG Railways Inc., ISG South Chicago & Indiana Harbor Railway Co., and ISG Cleveland Works Railway Co.

Ispat Inland Holding Inc. (U.S.) (Ispat), a noncarrier, has filed a verified

notice of exemption to acquire control of the following three railroads: (1) ISG Railways, Inc. (ISGR); (2) ISG South Chicago & Indiana Harbor Railway Co. (ISG/SCIH); and (3) ISG Cleveland Works Railway Co. (ISG/CWRC) (collectively, ISG Railroads). ISG/SCIH and ISG/CWRC are Class III railroads and ISGR is a Class II railroad, operating in Maryland, Delaware, Indiana, Pennsylvania, Illinois, and Ohio.

The transaction was scheduled to be consummated on or after December 22, 2005, the effective date of the exemption (7 days after the exemption was filed).

Ispat states that this is a corporate family transaction that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. As a result of this transaction, Ispat will acquire control of ISG Railroads, pursuant to a corporate restructuring by Mittal Steel Company N.V. (Mittal Steel). Mittal Steel indirectly controls both Ispat and ISG Railroads.[1] Ispat will also acquire Mittal Steel USA ISG, Inc. (Mittal/ISG), which controls the ISG Railroads.[2] Ispat and Mittal/ISG are indirect subsidiaries of Mittal Steel. Mittal/ISG will continue to be an indirect subsidiary of Mittal Steel. The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because this transaction involves the control of one Class II carrier and two Class III carriers, this grant will be made subject to labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34805, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–8 Filed 1–3–06; 8:45 am]

BILLING CODE 4915–01–P

[1] Mittal Steel acquired control of ISG Railroads from the International Steel Group Inc. (ISG), in *Mittal Steel N.V.—Acquisition of Control Exemption—ISG Railways Inc.,—ISG South Chicago & Indiana Harbor Railway Co., and ISG Cleveland Works Railway Co.*, STB Finance Docket No. 34650 (STB served May 3, 2005).

[2] Through a corporate name change, ISG has become Mittal/ISG.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 28, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 3, 2005 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0013.

Type of Review: Extension.

Title: Change of Bond (Consent of Surety).

Form: TTB form F 5000.18.

Description: A change of Bond (Consent of Surety) is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The Change of Bond (Consent of Surety) is filed with the TTB and a copy is retained by TTB as long as it remains current and in force.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 2,000 hours.

OMB Number: 1513–0027.

Type of Review: Extension.

Title: Taxable Articles without Payment of Tax.

Form: TTB form F 5200.14.

Description: TTB needs this information to protect the revenue. If this TTB form is not properly completed, TTB will assess the tax on the manufacturer of tobacco products or cigarette papers and tubes or the proprietor of the export warehouse or customs manufacturing warehouse.

Respondents: Business or other for-profit, Individuals or households and Federal Government.

Estimated Total Burden Hours: 14,960 hours.

OMB Number: 1513–090.

Type of Review: Extension.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Form: TTB form F 5000.25.

Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on TTB F 5000.25. TTB needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 119 hours.

Clearance Officer: Frank Foote, (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E5–8247 Filed 1–3–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 28, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750

Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 3, 2005 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1290.

Type of Review: Extension.

Title: FI–86 (Final) Bad Debt Reserves of Banks.

Description: Section 585© of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. The information required by section 1.585–8 of the regulations identifies any election made or revoked by the taxpayer in accordance with section 585©.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 625 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E5–8248 Filed 1–3–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 2

Wednesday, January 4, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051205324–5324–01; I.D. 112805B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2006 and 2007 Proposed Harvest Specifications for Groundfish

Correction

In proposed rule document 05–24168 beginning on page 74723 in the issue of Friday, December 16, 2005, make the following correction:

On page 74726, in Table 1., under the heading "2007" under the column "CDQ[3]" in the fifth line, "44490" should read "90".

[FR Doc. C5–24168 Filed 1–3–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 4, 2006

Part II

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[EPA–HQ–OW–2002–0043; FRL–8012–1]

RIN 2040–AD38

National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating today's final rule, the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR), to provide for increased protection against the potential risks for cancer and reproductive and developmental health effects associated with disinfection byproducts (DBPs). The final Stage 2 DBPR contains maximum contaminant level goals for chloroform, monochloroacetic acid and trichloroacetic acid; National Primary Drinking Water Regulations, which consist of maximum contaminant levels (MCLs) and monitoring, reporting, and public notification requirements for total trihalomethanes (TTHM) and haloacetic acids (HAA5); and revisions to the reduced monitoring requirements for bromate. This document also specifies the best available technologies for the final MCLs. EPA is also approving additional analytical methods for the determination of disinfectants and DBPs in drinking water. EPA believes the Stage 2 DBPR will reduce the potential risks of cancer and reproductive and developmental health effects associated with DBPs by reducing peak and average levels of DBPs in drinking water supplies.

The Stage 2 DBPR applies to public water systems (PWSs) that are community water systems (CWSs) or nontransient noncommunity water systems (NTNCWs) that add a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light.

This rule also makes minor corrections to drinking water regulations, specifically the Public Notification tables. New endnotes were added to these tables in recent rulemakings; however, the corresponding footnote numbering in the tables was not changed. In addition, this rule makes a minor correction to the Stage 1 Disinfectants and Disinfection Byproducts Rule by replacing a sentence that was inadvertently removed.

DATES: This final rule is effective on March 6, 2006. For judicial review purposes, this final rule is promulgated as January 4, 2006. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2002–0043. All documents in the docket are listed on the *http://www.regulations.gov* Web site.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 10 a.m. to 4 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 Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Tom Grubbs, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5262; fax number: (202) 564–3767; e-mail address: *grubbs.thomas@epa.gov*. For general information, contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 10 a.m. to 4 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the Stage 2 DBPR are community and nontransient noncommunity water systems that add a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light. Regulated categories and entities are identified in the following chart.

Category	Examples of regulated entities
Industry	Community and nontransient noncommunity water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light.
State, Local, Tribal, or Federal Governments	Community and nontransient noncommunity water systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of "public water system" in § 141.2 and the section entitled "coverage" (§ 141.3) in Title 40 of the Code of Federal Regulations and applicability criteria in § 141.600 and 141.620 of today's proposal. If you have questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

See the **ADDRESSES** section for information on how to receive a copy of this document and related information.

Regional contacts:

I. Kevin Reilly, Water Supply Section, JFK Federal Bldg., Room 203, Boston, MA 02203, (617) 565–3616.

II. Michael Lowy, Water Supply Section, 290 Broadway, 24th Floor, New

York, NY 10007–1866, (212) 637–3830.
III. Jason Gambatese, Drinking Water Section (3WM41), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5759.
IV. Robert Burns, Drinking Water Section, 61 Forsyth Street SW., Atlanta, GA 30303, (404) 562–9456.
V. Miguel Del Toral, Water Supply Section, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–5253.
VI. Blake L. Atkins, Drinking Water Section, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–2297.
VII. Douglas J. Brune, Drinking Water Management Branch, 901 North 5th Street, Kansas City, KS 66101, (800) 233–0425.
VIII. Bob Clement, Public Water Supply Section (8P2-W-MS), 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6653.
IX. Bruce Macler, Water Supply Section, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3569.
X. Wendy Marshall, Drinking Water Unit, 1200 Sixth Avenue (OW–136), Seattle, WA 98101, (206) 553–1890.

Abbreviations Used in This Document

ASDWA Association of State Drinking Water Administrators
ASTM American Society for Testing and Materials
AWWA American Water Works Association
AwwaRF American Water Works Association Research Foundation
BAT Best available technology
BCAA Bromochloroacetic acid
BDCM Bromodichloromethane
CDBG Community Development Block Grant
CWS Community water system
DBAA Dibromoacetic acid
DBCM Dibromochloromethane
DBP Disinfection byproduct
DBPR Disinfectants and Disinfection Byproducts Rule
DCAA Dichloroacetic acid
EA Economic analysis
EC Enhanced coagulation
EDA Ethylenediamine
EPA United States Environmental Protection Agency
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
GAC Granular activated carbon
GC/ECD Gas chromatography using electron capture detection
GWR Ground Water Rule
GWUDI Ground water under the direct influence of surface water
HAA5 Haloacetic acids (five) (sum of monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid)
HAN Haloacetonitriles (trichloroacetonitrile, dichloroacetonitrile, bromochloroacetonitrile, and dibromoacetonitrile)
IC Ion chromatograph
IC/ICP–MS Ion chromatograph coupled to an inductively coupled plasma mass spectrometer
IDSE Initial distribution system evaluation
ILSI International Life Sciences Institute
IESWTR Interim Enhanced Surface Water Treatment Rule
IPCS International Programme on Chemical Safety
IRIS Integrated Risk Information System (EPA)
LOAEL Lowest observed adverse effect level
LRAA Locational running annual average
LT1ESTWR Long Term 1 Enhanced Surface Water Treatment Rule
LT2ESTWR Long Term 2 Enhanced Surface Water Treatment Rule
MBAA Monobromoacetic acid
MCAA Monochloroacetic acid
MCL Maximum contaminant level
MCLG Maximum contaminant level goal
M–DBP Microbial and disinfection byproducts mg/L Milligram per liter
MRL Minimum reporting level
MRDL Maximum residual disinfectant level
MRDLG Maximum residual disinfectant level goal
NDMA N-nitrosodimethylamine
NDWAC National Drinking Water Advisory Council
NF Nanofiltration
NOAEL No Observed Adverse Effect Level
NODA Notice of data availability
NPDWR National primary drinking water regulation
NRWA National Rural Water Association
NTNCWS Nontransient noncommunity water system
NTP National Toxicology Program
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PAR Population attributable risk
PE Performance evaluation
PWS Public water system
RAA Running annual average
RFA Regulatory Flexibility Act
RfD Reference dose
RSC Relative source contribution
RUS Rural Utility Service
SAB Science Advisory Board
SBAR Small Business Advisory Review
SBREFA Small Business Regulatory Enforcement Fairness Act
SDWA Safe Drinking Water Act, or the "Act," as amended in 1996
SER Small Entity Representative
SGA Small for gestational age
SUVA Specific ultraviolet absorbance
SWAT Surface Water Analytical Tool
SWTR Surface Water Treatment Rule
TC Total coliforms
TCAA Trichloroacetic acid
TCR Total Coliform Rule
THM Trihalomethane
TOC Total organic carbon
TTHM Total trihalomethanes (sum of four THMs: chloroform, bromodichloromethane, dibromochloromethane, and bromoform)
TWG Technical work group
UMRA Unfunded Mandates Reform Act
UV 254 Ultraviolet absorption at 254 nm
VSL Value of Statistical Life
WTP Willingness To Pay

Table of Contents

II. Summary of the Final Rule

A. Why is EPA Promulgating the Stage 2 DBPR?

The Environmental Protection Agency is finalizing the Stage 2 Disinfectants and Disinfection Byproduct Rule (DBPR) to reduce potential cancer risks and address concerns with potential reproductive and developmental risks from DBPs. The Agency is committed to ensuring that all public water systems provide clean and safe drinking water. Disinfectants are an essential element of drinking water treatment because of the barrier they provide against harmful waterborne microbial pathogens. However, disinfectants react with naturally occurring organic and inorganic matter in source water and distribution systems to form disinfection byproducts (DBPs) that may pose health risks. The Stage 2 DBPR is designed to reduce the level of exposure from DBPs without undermining the control of microbial pathogens. The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) is being finalized and implemented simultaneously with the Stage 2 DBPR to ensure that drinking water is microbiologically safe at the limits set for DBPs.

Congress required EPA to promulgate the Stage 2 DBPR as part of the 1996 Safe Drinking Water Act (SDWA) Amendments (section 1412(b)(2)(C)). The Stage 2 DBPR augments the Stage 1 DBPR that was finalized in 1998 (63 FR 69390, December 16, 1998) (USEPA

1998a). The goal of the Stage 2 DBPR is to target the highest risk systems for changes beyond those required for Stage 1 DBPR. Today's rule reflects consensus recommendations from the Stage 2 Microbial/Disinfection Byproducts (M–DBP) Federal Advisory Committee (the Advisory Committee) as well as public comments.

New information on health effects, occurrence, and treatment has become available since the Stage 1 DBPR that supports the need for the Stage 2 DBPR. EPA has completed a more extensive analysis of health effects, particularly reproductive and developmental endpoints, associated with DBPs since the Stage 1 DBPR. Some recent studies on both human epidemiology and animal toxicology have shown possible associations between chlorinated drinking water and reproductive and developmental endpoints such as spontaneous abortion, stillbirth, neural tube and other birth defects, intrauterine growth retardation, and low birth weight. While results of these studies have been mixed, EPA believes they support a potential hazard concern. New epidemiology and toxicology studies evaluating bladder, colon, and rectal cancers have increased the weight of evidence linking these health effects to DBP exposure. The large number of people (more than 260 million Americans) exposed to DBPs and the potential cancer, reproductive, and developmental risks have played a significant role in EPA's decision to move forward with regulatory changes that target lowering DBP exposures beyond the requirements of the Stage 1 DBPR.

While the Stage 1 DBPR is predicted to provide a major reduction in DBP exposure, national survey data suggest that some customers may receive drinking water with elevated, or peak, DBP concentrations even when their distribution system is in compliance with the Stage 1 DBPR. Some of these peak concentrations are substantially greater than the Stage 1 DBPR maximum contaminant levels (MCLs) and some customers receive these elevated levels of DBPs on a consistent basis. The new survey results also show that Stage 1 DBPR monitoring sites may not be representative of higher DBP concentrations that occur in distribution systems. In addition, new studies indicate that cost-effective technologies including ultraviolet light (UV) and granular activated carbon (GAC) may be very effective at lowering DBP levels. EPA's analysis of this new occurrence and treatment information indicates that significant public health benefits may be achieved through further, cost-effective reductions of DBPs in distribution systems.

The Stage 2 DBPR presents a risk-targeting approach to reduce risks from DBPs. The new requirements provide for more consistent, equitable protection from DBPs across the entire distribution system and the reduction of DBP peaks. New risk-targeting provisions require systems to first identify their risk level; then, only those systems with the greatest risk will need to make operational or treatment changes. The Stage 2 DBPR, in conjunction with the LT2ESWTR, will help public water systems deliver safer water to Americans with the benefits of disinfection to control pathogens and with fewer risks from DBPs.

B. What Does the Stage 2 DBPR Require?

The risk-targeting components of the Stage 2 DBPR focus the greatest amount of change where the greatest amount of risk may exist. Therefore, the provisions of the Stage 2 DBPR focus first on identifying the higher risks through the Initial Distribution System Evaluation (IDSE). The rule then addresses reducing exposure and lowering DBP peaks in distribution systems by using a new method to determine MCL compliance (locational running annual average (LRAA)), defining operational evaluation levels, and regulating consecutive systems. This section briefly describes the requirements of this final rule. More detailed information on the regulatory requirements for this rule can be found in Section IV.

1. Initial Distribution System Evaluation

The first provision, designed to identify higher risk systems, is the Initial Distribution System Evaluation (IDSE). The purpose of the IDSE is to identify Stage 2 DBPR compliance monitoring sites that represent each system's highest levels of DBPs. Because Stage 2 DBPR compliance will be determined at these new monitoring sites, only those systems that identify elevated concentrations of TTHM and HAA5 will need to make treatment or process changes to bring the system into compliance with the Stage 2 DBPR. By identifying compliance monitoring sites with the highest concentrations of TTHM and HAA5 in each system's distribution system, the IDSE will offer increased assurance that MCLs are being met across the distribution system and that customers are receiving more equitable public health protection. Both treatment changes and awareness of TTHM and HAA5 levels resulting from the IDSE will allow systems to better control for distribution system peaks.

The IDSE is designed to offer flexibility to public water systems. The IDSE requires TTHM and HAA5 monitoring for one year on a regular schedule that is determined by source water type and system size. Alternatively, systems have the option of performing a site-specific study based on historical data, water distribution system models, or other data; and waivers are available under certain circumstances. The IDSE requirements are discussed in Sections IV.E, IV.F., and IV.G of this preamble and in subpart U of the rule language.

2. Compliance and Monitoring Requirements

As in Stage 1, the Stage 2 DBPR focuses on monitoring for and reducing concentrations of two classes of DBPs: total trihalomethanes (TTHM) and haloacetic acids (HAA5). These two groups of DBPs act as indicators for the various byproducts that are present in water disinfected with chlorine or chloramine. This means that concentrations of TTHM and HAA5 are monitored for compliance, but their presence in drinking water is representative of many other chlorination DBPs that may also occur in the water; thus, a reduction in TTHM and HAA5 generally indicates an overall reduction of DBPs.

The second provision of the Stage 2 DBPR is designed to address spatial variations in DBP exposure through a new compliance calculation (referred to as locational running annual average) for TTHM and HAA5 MCLs. The MCL values remain the same as in the Stage 1. The Stage 1 DBPR running annual average (RAA) calculation allowed some locations within a distribution system to have higher DBP annual averages than others as long as the system-wide average was below the MCL. The Stage 2 DBPR bases compliance on a locational running annual average (LRAA) calculation, where the annual average at each sampling location in the distribution system will be used to determine compliance with the MCLs of 0.080 mg/L and 0.060 mg/L for TTHM and HAA5, respectively. The LRAA will reduce exposures to high DBP concentrations by ensuring that each monitoring site is in compliance with the MCLs as an annual average, while providing all customers drinking water that more consistently meets the MCLs. A more detailed discussion of Stage 2 DBPR MCL requirements can be found in Sections IV.C, IV.E, and IV.G of this preamble and in § 141.64(b)(2) and (3) and subpart V of the rule language.

The number of compliance monitoring sites is based on the

population served and the source water type. EPA believes that population-based monitoring provides better risk-targeting and is easier to implement. Section IV.G describes population-based monitoring and how it affects systems complying with this rule.

The Stage 2 DBPR includes new MCLGs for chloroform, monochloroacetic acid, and trichloroacetic acid, but these new MCLGs do not affect the MCLs for TTHM or HAA5.

3. Operational Evaluation Levels

The IDSE and LRAA calculation will lead to lower DBP concentrations overall and reduce short term exposures to high DBP concentrations in certain areas, but this strengthened approach to regulating DBPs will still allow individual DBP samples above the MCL even when systems are in compliance with the Stage 2 DBPR. Today's rule requires systems that exceed operational evaluation levels (referred to as significant excursions in the proposed rule) to evaluate system operational practices and identify opportunities to reduce DBP concentrations in the distribution system. This provision will curtail peaks by providing systems with a proactive approach to remain in compliance. Operational evaluation requirements are discussed in greater detail in Section IV.H.

4. Consecutive Systems

The Stage 2 DBPR also contains provisions for regulating consecutive systems, defined in the Stage 2 DBPR as public water systems that buy or otherwise receive some or all of their finished water from another public water system. Uniform regulation of consecutive systems provided by the Stage 2 DBPR will ensure that consecutive systems deliver drinking water that meets applicable DBP standards, thereby providing better, more equitable public health protection. More information on regulation of consecutive systems can be found in Sections IV.B, IV.E, and IV.G.

C. Correction of § 141.132

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. In addition to promulgating the Stage 2 regulations, this rule also makes a minor correction to the National Primary Drinking Water Regulations, specifically the Stage 1 Disinfection Byproducts Rule. This rule corrects a technical error made in the January 16, 2001, **Federal Register** Notice (66 FR 3769) (see page 3770). This rule restores the following sentence that was inadvertently removed from § 141.132 (b)(1)(iii), "Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively." This text had been part of the original regulation when it was codified in the CFR on December 16, 1998. However, as a result of a subsequent amendment to that regulatory text, the text discussed today was removed. EPA recognized the error only after publication of the new amendment, and is now correcting the error. EPA is merely restoring to the CFR language that EPA had promulgated on December 16, 1998. EPA is not creating any new rights or obligations by this technical correction. Thus, additional notice and public comment is not necessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B).

III. Background

A combination of factors influenced the development of the Stage 2 DBPR. These include the initial 1992–1994 Microbial and Disinfection Byproduct (M–DBP) stakeholder deliberations and EPA's Stage 1 DBPR proposal (USEPA 1994); the 1996 Safe Drinking Water Act (SDWA) Amendments; the 1996 Information Collection Rule; the 1998 Stage 1 DBPR; new data, research, and analysis on disinfection byproduct (DBP) occurrence, treatment, and health effects since the Stage 1 DBPR; and the Stage 2 DBPR Microbial and Disinfection Byproducts Federal Advisory Committee. The following sections provide summary background information on these subjects. For additional information, see the proposed Stage 2 DBPR and supporting technical material where cited (68 FR 49548, August 18, 2003) (USEPA 2003a).

A. Statutory Requirements and Legal Authority

The SDWA, as amended in 1996, authorizes EPA to promulgate a national primary drinking water regulation (NPDWR) and publish a maximum contaminant level goal (MCLG) for any contaminant the Administrator determines "may have an adverse effect on the health of persons," is "known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern," and for which "in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems" (SDWA section 1412(b)(1)(A)). MCLGs are non-enforceable health goals set at a level at which "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." These health goals are published at the same time as the NPDWR (SDWA sections 1412(b)(4) and 1412(a)(3)).

SDWA also requires each NPDWR for which an MCLG is established to specify an MCL that is as close to the MCLG as is feasible (sections 1412(b)(4) and 1401(1)(C)). The Agency may also consider additional health risks from other contaminants and establish an MCL "at a level other than the feasible level, if the technology, treatment techniques, and other means used to determine the feasible level would result in an increase in the health risk from drinking water by—(i) increasing the concentration of other contaminants in drinking water; or (ii) interfering with the efficacy of drinking water treatment techniques or processes that are used to comply with other national primary drinking water regulations" (section 1412(b)(5)(A)). When establishing an MCL or treatment technique under this authority, "the level or levels or treatment techniques shall minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level or levels" (section 1412(b)(5)(B)). In today's rule, the Agency is establishing MCLGs and MCLs for certain DBPs, as described in Section IV.

Finally, section 1412(b)(2)(C) of the Act requires EPA to promulgate a Stage 2 DBPR. Consistent with statutory provisions for risk balancing (section 1412(b)(5)(B)), EPA is finalizing the LT2ESWTR concurrently with the Stage 2 DBPR to ensure simultaneous protection from microbial and DBP risks.

B. What is the Regulatory History of the Stage 2 DBPR and How Were Stakeholders Involved?

This section first summarizes the existing regulations aimed at controlling

levels of DBPs in drinking water. The Stage 2 DBPR establishes regulatory requirements beyond these rules that target high risk systems and provide for more equitable protection from DBPs across the entire distribution system. Next, this section summarizes the extensive stakeholder involvement in the development of the Stage 2 DBPR.

1. Total Trihalomethanes Rule

The first rule to regulate DBPs was promulgated on November 29, 1979. The Total Trihalomethanes Rule (44 FR 68624, November 29, 1979) (USEPA 1979) set an MCL of 0.10 mg/L for total trihalomethanes (TTHM). Compliance was based on the running annual average (RAA) of quarterly averages of all samples collected throughout the distribution system. This TTHM standard applied only to community water systems using surface water and/or ground water that served at least 10,000 people and added a disinfectant to the drinking water during any part of the treatment process.

2. Stage 1 Disinfectants and Disinfection Byproducts Rule

The Stage 1 DBPR, finalized in 1998 (USEPA 1998a), applies to all community and nontransient noncommunity water systems that add a chemical disinfectant to water. The rule established maximum residual disinfectant level goals (MRDLGs) and enforceable maximum residual disinfectant level (MRDL) standards for three chemical disinfectants—chlorine, chloramine, and chlorine dioxide; maximum contaminant level goals (MCLGs) for three trihalomethanes (THMs), two haloacetic acids (HAAs), bromate, and chlorite; and enforceable maximum contaminant level (MCL) standards for TTHM, five haloacetic acids (HAA5), bromate (calculated as running annual averages (RAAs)), and chlorite (based on daily and monthly sampling). The Stage 1 DBPR uses TTHM and HAA5 as indicators of the various DBPs that are present in disinfected water. Under the Stage 1 DBPR, water systems that use surface water or ground water under the direct influence of surface water and use conventional filtration treatment are required to remove specified percentages of organic materials, measured as total organic carbon (TOC), that may react with disinfectants to form DBPs. Removal is achieved through enhanced coagulation or enhanced softening, unless a system meets one or more alternative compliance criteria.

The Stage 1 DBPR was one of the first rules to be promulgated under the 1996 SDWA Amendments (USEPA 1998a). EPA finalized the Interim Enhanced Surface Water Treatment Rule (63 FR 69477, December 16, 1998) (USEPA 1998b) at the same time as the Stage 1 DBPR to ensure simultaneous compliance and address risk tradeoff issues. Both rules were products of extensive Federal Advisory Committee deliberations and final consensus recommendations in 1997.

3. Stakeholder Involvement

a. Federal Advisory Committee process. EPA reconvened the M-DBP Advisory Committee in March 1999 to develop recommendations on issues pertaining to the Stage 2 DBPR and LT2ESWTR. The Stage 2 M-DBP Advisory Committee consisted of 21 organizational members representing EPA, State and local public health and regulatory agencies, local elected officials, Native American Tribes, large and small drinking water suppliers, chemical and equipment manufacturers, environmental groups, and other stakeholders. Technical support for the Advisory Committee's discussions was provided by a technical working group established by the Advisory Committee. The Advisory Committee held ten meetings from September 1999 to July 2000, which were open to the public, with an opportunity for public comment at each meeting.

The Advisory Committee carefully considered extensive new data on the occurrence and health effects of DBPs, as well as costs and potential impacts on public water systems. In addition, they considered risk tradeoffs associated with treatment changes. Based upon this detailed technical evaluation, the committee concluded that a targeted protective public health approach should be taken to address exposure to DBPs beyond the requirements of the Stage 1 DBPR. While there had been substantial research to date, the Advisory Committee also concluded that significant uncertainty remained regarding the risk associated with DBPs in drinking water. After reaching these conclusions, the Advisory Committee developed an Agreement in Principle (65 FR 83015, December 29, 2000) (USEPA 2000a) that laid out their consensus recommendations on how to further control DBPs in public water systems, which are reflected in today's final rule.

In the Agreement in Principle, the Advisory Committee recommended maintaining the MCLs for TTHM and HAA5 at 0.080 mg/L and 0.060 mg/L, respectively, but changing the compliance calculation in two phases to facilitate systems moving from the running annual average (RAA) calculation to a locational running annual average (LRAA) calculation. In the first phase, systems would continue to comply with the Stage 1 DBPR MCLs as RAAs and, at the same time, comply with MCLs of 0.120 mg/L for TTHM and 0.100 mg/L for HAA5 calculated as LRAAs. RAA calculations average all samples collected within a distribution system over a one-year period, but LRAA calculations average all samples taken at each individual sampling location in a distribution system during a one-year period. Systems would also carry out an Initial Distribution System Evaluation (IDSE) to select compliance monitoring sites that reflect higher TTHM and HAA5 levels occurring in the distribution system. The second phase of compliance would require MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5, calculated as LRAAs at individual monitoring sites identified through the IDSE. The first phase has been dropped in the final rule, as discussed in section IV.C.

The Agreement in Principle also provided recommendations for simultaneous compliance with the LT2ESWTR so that the reduction of DBPs does not compromise microbial protection. The complete text of the Agreement in Principle (USEPA 2000a) can be found online at *www.regulations.gov*.

b. Other outreach processes. EPA worked with stakeholders to develop the Stage 2 DBPR through various outreach activities other than the M-DBP Federal Advisory Committee process. The Agency consulted with State, local, and Tribal governments; the National Drinking Water Advisory Committee (NDWAC); the Science Advisory Board (SAB); and Small Entity Representatives (SERs) and small system operators (as part of an Agency outreach initiative under the Regulatory Flexibility Act). Section VII includes a complete description of the many stakeholder activities which contributed to the development of the Stage 2 DBPR.

Additionally, EPA posted a pre-proposal draft of the Stage 2 DBPR preamble and regulatory language on an EPA Internet site on October 17, 2001. This public review period allowed readers to comment on the Stage 2 DBPR's consistency with the Agreement in Principle of the Stage 2 M-DBP Advisory Committee. EPA received important suggestions on this pre-proposal draft from 14 commenters, which included public water systems, State governments, laboratories, and other stakeholders.

C. Public Health Concerns to be Addressed

EPA is promulgating the Stage 2 rule to reduce the potential risks of cancer and reproductive and developmental health effects from DBPs. In addition, the provisions of the Stage 2 DBPR provide for more equitable public health protection. Sections C and D describe the general basis for this public health concern through reviewing information in the following areas: the health effects associated with DBPs, DBP occurrence, and the control of DBPs.

1. What Are DBPs?

Chlorine has been widely used to kill disease-causing microbes in drinking water. The addition of chlorine in PWSs across the U.S. to kill microbial pathogens in the water supply has been cited as one of the greatest public health advances of the twentieth century (Okun 2003). For example, during the decade 1880–1890, American cities experienced an average mortality rate of 58 per 100,000 from typhoid, which was commonly transmitted through contaminated water. By 1938, this rate had fallen to 0.67 deaths per 100,000, largely due to improved treatment of drinking water (Blake 1956).

During the disinfection process, organic and inorganic material in source waters can combine with chlorine and certain other chemical disinfectants to form DBPs. More than 260 million people in the U.S. are exposed to disinfected water and DBPs (USEPA 2005a). Although chlorine is the most commonly applied disinfectant, other disinfectants, including ozone, chlorine dioxide, chloramine, and ultraviolet radiation, are in use. In combination with these, all surface water systems must also use either chlorine or chloramine to maintain a disinfectant residual in their distribution system. The kind of disinfectant used can produce different types and levels of disinfectant byproducts in the drinking water.

Many factors affect the amount and kinds of DBPs in drinking water. Areas in the distribution system that have had longer contact time with chemical disinfectants tend to have higher levels of DBPs, such as sites farther from the treatment plant, dead ends in the system, and small diameter pipes. The makeup and source of the water also affect DBP formation. Different types of organic and inorganic material will form different types and levels of DBPs. Other factors, such as water temperature, season, pH, and location within the water purification process where disinfectants are added, can affect DBP formation within and between water systems.

THMs and HAAs are widely occurring classes of DBPs formed during disinfection with chlorine and chloramine. The four THMs (TTHM) and five HAAs (HAA5) measured and regulated in the Stage 2 DBPR act as indicators for DBP occurrence. There are other known DBPs in addition to a variety of unidentified DBPs present in disinfected water. THMs and HAAs typically occur at higher levels than other known and unidentified DBPs (McGuire et al. 2002; Weinberg et al. 2002). The presence of TTHM and HAA5 is representative of the occurrence of many other chlorination DBPs; thus, a reduction in the TTHM and HAA5 generally indicates an overall reduction of DBPs.

2. DBP Health Effects

Since the mid 1980's, epidemiological studies have supported a potential association between bladder cancer and chlorinated water and possibly also with colon and rectal cancers. In addition, more recent health studies have reported potential associations between chlorinated drinking water and reproductive and developmental health effects.

Based on a collective evaluation of both the human epidemiology and animal toxicology data on cancer and reproductive and developmental health effects discussed below and in consideration of the large number of people exposed to chlorinated byproducts in drinking water (more than 260 million), EPA concludes that (1) new cancer data since Stage 1 strengthen the evidence of a potential association of chlorinated water with bladder cancer and suggests an association for colon and rectal cancers, (2) current reproductive and developmental health effects data do not support a conclusion at this time as to whether exposure to chlorinated drinking water or disinfection byproducts causes adverse developmental or reproductive health effects, but do support a potential health concern, and (3) the combined health data indicate a need for public health protection beyond that provided by the Stage 1 DBPR.

This section summarizes the key information in the areas of cancer, reproductive, and developmental health studies that EPA used to arrive at these conclusions. Throughout this writeup, EPA uses 'weight of evidence,' 'causality,' and 'hazard' as follows:

- A 'weight of evidence' evaluation is a collective evaluation of all pertinent information. Judgement about the weight of evidence involves considerations of the quality and adequacy of data and consistency of responses. These factors are not scored mechanically by adding pluses and minuses; they are judged in combination.
- Criteria for determining 'causality' include consistency, strength, and specificity of association, a temporal relationship, a biological gradient (dose-response relationship), biological plausibility, coherence with multiple lines of evidence, evidence from human populations, and information on agent's structural analogues (USEPA 2005i). Additional considerations for individual study findings include reliable exposure data, statistical power and significance, and freedom from bias and confounding.
- The term 'hazard' describes not a definitive conclusion, but the possibility that a health effect may be attributed to a certain exposure, in this case chlorinated water. Analyses done for the Stage 2 DBPR follow the 1999 EPA Proposed Guidelines for Carcinogenic Risk Assessment (USEPA 1999a). In March 2005, EPA updated and finalized the Cancer Guidelines and a Supplementary Children's Guidance, which include new considerations on mode of action for cancer risk determination and additional potential risks due to early childhood exposure (USEPA 2005i; USEPA 2005j). Conducting the cancer evaluation using the 2005 Cancer Guidelines would not result in any change from the existing analysis. With the exception of chloroform, no mode of action has been established for other specific regulated DBPs. Although some of the DBPs have given mixed mutagenicity and genotoxicity results, having a positive mutagenicity study does not necessarily mean that a chemical has a mutagenic mode of action. The extra factor of safety for children's health protection does not apply because the new Supplementary Children's Guidance requires application of the children's factor only when a mutagenic mode of action has been identified.

a. Cancer health effects. The following section briefly discusses cancer epidemiology and toxicology information EPA analyzed and some conclusions of these studies and reports. Further discussion of these studies and EPA's conclusions can be found in the proposed Stage 2 DBPR (USEPA 2003a) and the Economic Analysis for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule (Economic Analysis (EA)) (USEPA 2005a).

Human epidemiology studies and animal toxicology studies have

examined associations between chlorinated drinking water or DBPs and cancer. While EPA cannot conclude there is a causal link between exposure to chlorinated surface water and cancer, EPA believes that the available research indicates a potential association between bladder cancer and exposure to chlorinated drinking water or DBPs. EPA also believes the available research suggests a possible association between rectal and colon cancers and exposure to chlorinated drinking water or DBPs. This is based on EPA's evaluation of all available cancer studies. The next two sections focus on studies published since the Stage 1 DBPR. Conclusions are based on the research as a whole.

i. Epidemiology. A number of epidemiological studies have been conducted to investigate the relationship between exposure to chlorinated drinking water and various cancers. These studies contribute to the overall evidence on potential human health hazards from exposure to chlorinated drinking water.

Epidemiology studies provide useful health effects information because they reflect human exposure to a drinking water DBP mixture through multiple routes of intake such as ingestion, inhalation and dermal absorption. The greatest difficulty with conducting cancer epidemiology studies is the length of time between exposure and effect. Higher quality studies have adequately controlled for confounding and have limited the potential for exposure misclassification, for example, using DBP levels in drinking water as the exposure metric as opposed to type of source water. Study design considerations for interpreting cancer epidemiology data include sufficient follow-up time to detect disease occurrence, adequate sample size, valid ascertainment of cause of the cancer, and reduction of potential selection bias in case-control and cohort studies (by having comparable cases and controls and by limiting loss to follow-up). Epidemiology studies provide extremely useful information on human exposure to chlorinated water, which complement single chemical, high dose animal data.

In the Stage 1 DBPR, EPA concluded that the epidemiological evidence suggested a potential increased risk for bladder cancer. Some key studies EPA considered for Stage 1 include Cantor et al. (1998), Doyle et al. (1997), Freedman et al. (1997), King and Marrett (1996), McGeehin et al. (1993), Cantor et al. (1987), and Cantor et al. (1985). Several studies published since the Stage 1 DBPR continue to support an association between increased risk of bladder cancer and exposure to chlorinated surface water (Chevrier et al. 2004; Koivusalo et al. 1998; Yang et al. 1998). One study found no effects on a biomarker of genotoxicity in urinary bladder cells from TTHM exposure (Ranmuthugala et al. 2003). Epidemiological reviews and meta-analyses generally support the possibility of an association between chlorinated water or THMs and bladder cancer (Villanueva et al. 2004; Villanueva et al. 2003; Villanueva et al. 2001; Mills et al. 1998). The World Health Organization (WHO 2000) found data inconclusive or insufficient to determine causality between chlorinated water and any health endpoint, although they concluded that the evidence is better for bladder cancer than for other cancers.

In the Stage 1 DBPR, EPA concluded that early studies suggested a small possible increase in rectal and colon cancers from exposure to chlorinated surface waters. The database of studies on colon and rectal cancers continues to support a possible association, but evidence remains mixed. For colon cancer, one newer study supports the evidence of an association (King et al. 2000a) while others showed inconsistent findings (Hildesheim et al. 1998; Yang et al. 1998). Rectal cancer studies are also mixed. Hildesheim et al. (1998) and Yang et al. (1998) support an association with rectal cancer while King et al. (2000a) did not. A review of colon and rectal cancer concluded evidence was inconclusive but that there was a stronger association for rectal cancer and chlorination DBPs than for colon cancer (Mills et al. 1998). The WHO (2000) review reported that studies showed weak to moderate associations with colon and rectal cancers and chlorinated surface water or THMs but that evidence is inadequate to evaluate these associations.

Recent studies on kidney, brain, and lung cancers and DBP exposure support a possible association (kidney: Yang et al. 1998, Koivusalo et al. 1998; brain: Cantor et al. 1999; lung: Yang et al. 1998). However, so few studies have examined these endpoints that definitive conclusions cannot be made. Studies on leukemia found little or no association with DBPs (Infante-Rivard et al. 2002; Infante-Rivard et al. 2001). A recent study did not find an association between pancreatic cancer and DBPs (Do et al. 2005). A study researching multiple cancer endpoints found an association between THM exposure and all cancers when grouped together (Vinceti et al. 2004). More details on the cancer epidemiology studies since the Stage 1 DBPR are outlined in Table II.D–1.

TABLE II.D–1.—SUMMARY OF CANCER EPIDEMIOLOGY STUDIES REVIEWED FOR STAGE 2 DBPR

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Do et al. 2005	Case-control study in Canada, 1994–1997.	Estimated chlorinated DBPs, chloroform, BDCM concentrations.	Pancreatic cancer.	No association was found between pancreatic cancer and exposure to chlorinated DBPs, chloroform, or BDCM.
Chevrier et al. 2004..	Case-control study in France, 1985–1987.	Compared THM levels, duration of exposure, and 3 types of water treatment (ozonation, chlorination, ozonation/chlorination).	Bladder cancer.	A statistically significant decreased risk of bladder cancer was found as duration of exposure to ozonated water increased. This was evident with and without adjustment for other exposure measures. A small association was detected for increased bladder cancer risk and duration of exposure to chlorinated surface water and with the estimated THM content of the water, achieving statistical significance only when adjusted for duration of ozonated water exposures. Effect modification by gender was noted in the adjusted analyses.

TABLE II.D–1.—SUMMARY OF CANCER EPIDEMIOLOGY STUDIES REVIEWED FOR STAGE 2 DBPR—Continued

	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Vinceti et al. 2004.	Retrospective cohort study in Italy, 1987–1999.	Standardized mortality ratios from all causes vs. cancer for consumers drinking water with high THMs.	15 cancers including colon, rectum, and bladder.	Mortality ratio from all cancers showed a statistically significant small increase for males consuming drinking water with high THMs. For females, an increased mortality ratio for all cancers was seen but was not statistically significant. Stomach cancer in men was the only individual cancer in which a statistically significant excess in mortality was detected for consumption of drinking water with high THMs.
Ranmuthugala et al. 2003.	Cohort study in 3 Australian communities, 1997.	Estimated dose of TTHM, chloroform, and bromoform from routinely-collected THM measurements and fluid intake diary.	Frequency of micronuclei in urinary bladder epithelial cells.	Relative risk estimates for DNA damage to bladder cells for THM dose metrics were near 1.0. The study provides no evidence that THMs are associated with DNA damage to bladder epithelial cells, and dose-response patterns were not detected.
Infante-Rivard et al. 2002.	Population-based case-control study in Quebec, 1980–1993.	Estimated prenatal and postnatal exposure to THMs and polymorphisms in two genes.	Acute lymphoblastic leukemia.	Data are suggestive, but imprecise, linking DNA variants with risk of acute lymphoblastic leukemia associated with drinking water DBPs. The number of genotyped subjects for GSTT1 and CYP2E1 genes was too small to be conclusive.
Infante-Rivard et al. 2001.	Population-based case-control study in Quebec, 1980–1993.	Compared water chlorination (never, sometimes, always) and exposure to TTHMs, metals, and nitrates.	Acute lymphoblastic leukemia.	No increased risk for lymphoblastic leukemia was observed for prenatal exposure at average levels of TTHMs, metals or nitrates. However, a non-statistically significant, small increased risk was seen for postnatal cumulative exposure to TTHMs and chloroform (both at above the 95th exposure percentile of the distribution for cases and controls), for zinc, cadmium, and arsenic, but not other metals or nitrates.
King et al. 2000a.	Population-based case-control study in southern Ontario, 1992–1994.	Compared source of drinking water and chlorination status. Estimated TTHM levels, duration of exposure, and tap water consumption.	Colon and rectal cancer.	Colon cancer risk was statistically associated with cumulative long term exposure to THMs, chlorinated surface water, and tap water consumption metrics among males only. Exposure-response relationships were evident for exposure measures combining duration and THM levels. Associations between the exposure measures and rectal cancer were not observed for either gender.
Cantor et al. 1999.	Population-based case-control study in Iowa, 1984–1987.	Compared level and duration of THM exposure (cumulative and average), source of water, chlorination, and water consumption.	Brain cancer	Among males, a statistically significant increased risk of brain cancer was detected for duration of chlorinated versus non-chlorinated source water, especially among high-level consumers of tap water. An increased risk of brain cancer for high water intake level was found in men. No associations were found for women for any of the exposure metrics examined.
Cantor et al. 1998.	Population-based case-control study in Iowa, 1986–1989.	Compared level and duration of THM exposure (cumulative and average), source of water, chlorination, and water consumption.	Bladder cancer	A statistically significant positive association between risk of bladder cancer and exposure to chlorinated groundwater or surface water reported for men and for smokers, but no association found for male/female non-smokers, or for women overall. Limited evidence was found for an association between tapwater consumption and bladder cancer risk. Suggestive evidence existed for exposure-response effects of chlorinated water and lifetime THM measures on bladder cancer risk.
Hildesheim et al. 1998.	Population-based case-control study in Iowa, 1986–1989.	Compared level and duration of THM exposure (cumulative and average), source of water, chlorination, and water consumption.	Colon and rectal cancer.	Increased risks of rectal cancer was associated with duration of exposure to chlorinated surface water and any chlorinated water, with evidence of an exposure-response relationship. Risk of rectal cancer is statistically significant increased with >60 years lifetime exposure to THMs in drinking water, and risk increased for individuals with low dietary fiber intake. Risks were similar for men and women and no effects were observed for tapwater measures. No associations were detected for water exposure measures and risk of colon cancer.
Koivusalo et al. 1998.	Population-based case-control study in Finland, 1991–1992.	Estimated residential duration of exposure and level of drinking water mutagenicity.	Bladder and kidney cancer.	Drinking water mutagenicity was associated with a small, statistically significant, exposure-related excess risk for kidney and bladder cancers among men; weaker associations were detected for mutagenic water and bladder or kidney cancer among women. The effect of mutagenicity on bladder cancer was modified by smoking status, with an increased risk among non-smokers.

TABLE II.D–1.—SUMMARY OF CANCER EPIDEMIOLOGY STUDIES REVIEWED FOR STAGE 2 DBPR—Continued

	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Yang et al. 1998.	Cross-sectional study in Taiwan, 1982–1991.	Examined residence in chlorinated (mainly surface water sources) relative to non-chlorinated (mainly private well) water.	Cancer of rectum, lung, bladder, kidney, colon, and 11 others.	Residence in chlorinating municipalities (vs. non-chlorinating) was statistically significantly associated with the following types of cancer in both males and females: rectal, lung, bladder, and kidney cancer. Liver cancer and all cancers were also statistically significantly elevated in chlorinated towns for males only. Mortality rates for cancers of the esophagus, stomach, colon, pancreas, prostate, brain, breast, cervix uteri and uterus, and ovary were comparable for chlorinated and non-chlorinated residence.
Doyle et al. 1997.	Prospective cohort study in Iowa, 1987–1993.	Examined chloroform levels and source of drinking water.	Colon, rectum, bladder, and 8 other cancers in women.	Statistically significant increased risk of colon cancer, breast cancer and all cancers combined was observed for women exposed to chloroform in drinking water, with evidence of exposure-response effects. No associations were detected between chloroform and bladder, rectum, kidney, upper digestive organs, lung, ovary, endometrium, or breast cancers, or for melanomas or non-Hodgkin's lymphoma. Surface water exposure (compared to ground water users) was also a significant predictor of colon and breast cancer risk.
Freedman et al. 1997.	Population-based case-control study in Maryland, 1975–1992.	Estimated duration of exposure to chlorinated water. Compared exposure to chlorinated municipal water (yes/no).	Bladder cancer	There was a weak association between bladder cancer risk and duration of exposure to municipal water for male cigarette smokers, as well as an exposure-response relationship. No association was seen for those with no history of smoking, suggesting that smoking may modify a possible effect of chlorinated surface water on the risk of bladder cancer.
King and Marrett 1996.	Case-control study in Ontario, Canada, 1992–1994.	Compared source of drinking water and chlorination status. Estimated TTHM levels, duration of exposure, and tap water consumption.	Bladder cancer	Statistically significant associations were detected for bladder cancer and chlorinated surface water, duration or concentration of THM levels and tap water consumption metrics. Population attributable risks were estimated at 14 to 16 percent. An exposure-response relationship was observed for estimated duration of high THM exposures and risk of bladder cancer.
McGeehin et al. 1993.	Population-based case-control study in Colorado, 1990–1991.	Compared source of drinking water, water treatment, and tap water versus bottled water. Estimated duration of exposure to TTHMs and levels of TTHMs, nitrates, and residual chlorine.	Bladder cancer	Statistically significant associations were detected for bladder cancer and duration of exposure to chlorinated surface water. The risk was similar for males and females and among nonsmokers and smokers. The attributable risk was estimated at 14.9 percent. High tap water intake was associated with risk of bladder cancer in a exposure-response fashion. No associations were detected between bladder cancer and levels of TTHMs, nitrates, and residual chlorine.
Cantor et al. 1987 (and Cantor et al. 1985).	Population-based case-control study in 10 areas of the U.S., 1977–1978.	Compared source of drinking water. Estimated total beverage and tap water consumption and duration of exposure.	Bladder cancer	Bladder cancer was statistically associated with duration of exposure to chlorinated surface water for women and nonsmokers of both sexes. The largest risks were seen when both exposure duration and level of tap water ingestion were combined. No association was seen for total beverage consumption.
Reviews/Meta-analyses				
Villanueva et al. 2004.	Review and meta-analysis of 6 case-control studies.	Individual-based exposure estimates to THMs and water consumption over a 40-year period.	Bladder cancer	The meta-analysis suggests that risk of bladder cancer in men increases with long-term exposure to TTHMs. An exposure-response pattern was observed among men exposed to TTHMs, with statistically significant risk seen at exposures higher than 50 ug/L. No association between TTHMs and bladder cancer was seen for women.
Villanueva et al. 2003 (and Goebell et al. 2004).	Review and meta-analysis of 6 case-control studies and 2 cohort studies.	Compared source of water and estimated duration of exposure to chlorinated drinking water.	Bladder cancer	The meta-analysis findings showed a moderate excess risk of bladder cancer attributable to long-term consumption of chlorinated drinking water for both genders, particularly in men. Statistically significance seen with men and combined both sexes. The risk was higher when exposure exceeded 40 years.

TABLE II.D–1.—SUMMARY OF CANCER EPIDEMIOLOGY STUDIES REVIEWED FOR STAGE 2 DBPR—Continued

	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Villanueva et al. 2001.	Qualitative review of 31 cancer studies.	Compared exposure to TTHM levels, mutagenic drinking water, water consumption, source water, types of disinfection (chlorination and chloramination), and residence times.	Cancer of bladder, colon, rectum, and 5 other cancers..	Review found that although results for cancer studies varied and were not always statistically significant, evidence for bladder cancer is strongest, and all 10 of the bladder cancer studies showed increased cancer risks with ingestion of chlorinated water. The authors felt associations with chlorinated water and cancer of the colon, rectum, pancreas, esophagus, brain, and other cancers were inconsistent.
WHO 2000	Qualitative reviews of various studies in Finland, U.S., and Canada.	Various exposures to THMs.	Various cancers	Studies reviewed reported weak to moderate increased relative risks of bladder, colon, rectal, pancreatic, breast, brain or lung cancer associated with long-term exposure to chlorinated drinking water. The authors felt evidence is inconclusive for an association between colon cancer and long-term exposure to THMs; that evidence is insufficient to evaluate a causal relationship between THMs and rectal, bladder, and other cancers. They found no association between THMs and increased risk of cardiovascular disease.
Mills et al. 1998.	Qualitative review of 22 studies.	Examined TTHM levels and water consumption. Compared source of water and 2 types of water treatment (chlorination and chloramination).	Cancer of colon, rectum, and bladder.	Review suggests possible increases in risks of bladder cancer with exposure to chlorinated drinking water. The authors felt evidence for increased risk of colon and rectal cancers is inconclusive, though evidence is stronger for rectal cancer.

Overall, bladder cancer data provide the strongest basis for quantifying cancer risks from DBPs. EPA has chosen this endpoint to estimate the primary benefits of the Stage 2 DBPR (see Section VI).

ii. Toxicology. Cancer toxicology studies provide additional support that chlorinated water is associated with cancer. In general, EPA uses long term toxicology studies that show a dose response to derive MCLGs and cancer potency factors. Short term studies are used for hazard identification and to design long term studies. Much of the available cancer toxicology information was available for the Stage 1 DBPR, but there have also been a number of new cancer toxicology and mode of action studies completed since the Stage 1 DBPR was finalized in December 1998.

In support of this rule, EPA has developed health criteria documents which summarize the available toxicology data for brominated THMs (USEPA 2005b), brominated HAAs (USEPA 2005c), MX (USEPA 2000b), MCAA (USEPA 2005d), and TCAA (USEPA 2005e). The 2003 IRIS assessment of DCAA (USEPA 2003b) and an addendum (USEPA 2005k) also provides analysis released after Stage 1. It summarizes information on exposure from drinking water and develops a slope factor for DCAA. IRIS also has toxicological reviews for chloroform (USEPA 2001a), chlorine dioxide and chlorite (USEPA 2000c), and bromate (USEPA 2001b), and is currently reassessing TCAA.

Slope factors and risk concentrations for BDCM, bromoform, DBCM and DCAA have been developed and are listed in Table II.D–2. For BDCM, bromoform, and DBCM, table values are derived from the brominated THM criteria document (USEPA 2005b), which uses IRIS numbers that have been updated using the 1999 EPA Proposed Guidelines for Carcinogenic Risk Assessment (USEPA 1999a). For DCAA, the values are derived directly from IRIS.

TABLE II.D–2.—QUANTIFICATION OF CANCER RISK

Disinfection byproduct	LED_{10}[a]		ED_{10}[a]	
	Slope factor $(mg/kg/day)^{-1}$	10^{-6} Risk concentration (mg/L)	Slope factor $(mg/kg/day)^{-1}$	10^{-6} Risk concentration (mg/L)
Bromodichloromethane	0.034	0.001	0.022	0.002
Bromoform	0.0045	0.008	0.0034	0.01
Dibromochloromethane	0.04	0.0009	0.017	0.002
Dichloroacetic Acid	0.048	0.0007	0.015[b]	0.0023[b]

[a] LED_{10} is the lower 95% confidence bound on the (effective dose) ED_{10} value. ED_{10} is the estimated dose producing effects in 10% of animals.

[b] The ED_{10} risk factors for DCAA have been changed from those given in the comparable table in the proposed Stage 2 DBPR to correct for transcriptional errors.

More research on DBPs is underway at EPA and other research institutions. Summaries of on-going studies may be found on EPA's DRINK Web site (*http://www.epa.gov/safewater/drink/intro.html*). Two-year bioassays by the National Toxicology Program (NTP) released in abstract form have recently been completed on BDCM and chlorate. The draft abstract on BDCM reported no evidence of carcinogenicity when BDCM was administered via drinking

water (NTP 2005a). Another recent study, a modified two-year bioassay on BDCM in the drinking water, reported little evidence of carcinogenicity (George et al. 2002). In a previous NTP study, tumors were observed, including an increased incidence of kidney, liver, and colon tumors, when BDCM was administered at higher doses by gavage in corn oil (NTP 1987). EPA will examine new information on BDCM as it becomes available. In the chlorate draft abstract, NTP found some evidence that it may be a carcinogen (NTP 2004). Chlorate is a byproduct of hypochlorite and chlorine dioxide systems. A long-term, two-year bioassay NTP study on DBA is also complete but has not yet undergone peer review (NTP 2005b).

b. Reproductive and developmental health effects. Both human epidemiology studies and animal toxicology studies have examined associations between chlorinated drinking water or DBPs and reproductive and developmental health effects. Based on an evaluation of the available science, EPA believes the data suggest that exposure to DBPs is a potential reproductive and developmental health hazard.

The following section briefly discusses the reproductive and developmental epidemiology and toxicology information available to EPA. Further discussion of these studies and EPA's conclusions can be found in the proposed Stage 2 DBPR (USEPA 2003a) and the Economic Analysis (USEPA 2005a).

i. Epidemiology. As discussed previously, epidemiology studies have the strength of relating human exposure to DBP mixtures through multiple intake routes. Although the critical exposure window for reproductive and developmental effects is much smaller than that for cancer (generally weeks versus years), exposure assessment is also a main limitation of reproductive and developmental epidemiology studies. Exposure assessment uncertainties arise from limited data on DBP concentrations and maternal water usage and source over the course of the pregnancy. However, classification errors typically push the true risk estimate towards the null value (Vineis 2004). According to Bove et al. (2002), "Difficulties in assessing exposure may result in exposure misclassification biases that would most likely produce substantial underestimates of risk as well as distorted or attenuated exposure-response trends." Studies of rare outcomes (e.g., individual birth defects) often have limited statistical power because of the small number of cases being examined. This limits the ability to detect statistically significant associations for small to moderate relative risk estimates. Small sample sizes also result in imprecision around risk estimates reflected by wide confidence intervals. In addition to the limitations of individual studies, evaluating reproductive and developmental epidemiology studies collectively is difficult because of the methodological differences between studies and the wide variety of endpoints examined. These factors may contribute to inconsistencies in the scientific body of literature as noted below.

More recent studies tend to be of higher quality because of improved exposure assessments and other methodological advancements. For example, studies that use THM levels to estimate exposure tend to be higher quality than studies that define exposure by source or treatment. These factors were taken into account by EPA when comparing and making conclusions on the reproductive and developmental epidemiology literature. What follows is a summary of available epidemiology literature on reproductive and developmental endpoints such as spontaneous abortion, stillbirth, neural tube and other birth defects, low birth weight, and intrauterine growth retardation. Information is grouped, where appropriate, into three categories on fetal growth, viability, and malformations, and reviews are described separately afterward. Table II.D–3 provides a more detailed description of each study or review.

Fetal growth. Many studies looked for an association between fetal growth (mainly small for gestational age, low birth weight, and pre-term delivery) and chlorinated water or DBPs. The results from the collection of studies as a whole are inconsistent. A number of studies support the possibility that exposure to chlorinated water or DBPs are associated with adverse fetal growth effects (Infante-Rivard 2004; Wright et al. 2004; Wright et al. 2003; Källén and Robert 2000; Gallagher et al. 1998; Kanitz et al. 1996; Bove et al. 1995; Kramer et al. 1992). Other studies showed mixed results (Porter et al. 2005; Savitz et al. 2005; Yang 2004) or did not provide evidence of an association (Toledano et al. 2005; Jaakkola et al. 2001; Dodds et al. 1999; Savitz et al. 1995) between DBP exposure and fetal growth. EPA notes that recent, higher quality studies provide some evidence of an increased risk of small for gestational age and low birth weight.

Fetal viability. While the database of epidemiology studies for fetal loss endpoints (spontaneous abortion or stillbirth) remains inconsistent as a whole, there is suggestive evidence of an association between fetal loss and chlorinated water or DBP exposure. Various studies support the possibility that exposure to chlorinated water or DBPs is associated with decreased fetal viability (Toledano et al. 2005; Dodds et al. 2004; King et al. 2000b; Dodds et al. 1999; Waller et al. 1998; Aschengrau et al. 1993; Aschengrau et al. 1989). Other studies did not support an association (Bove et al. 1995) or reported inconclusive results (Savitz et al. 2005; Swan et al. 1998; Savitz et al. 1995) between fetal viability and exposure to THMs or tapwater. A recent study by King et al. (2005) found little evidence of an association between stillbirths and haloacetic acids after controlling for trihalomethane exposures, though non-statistically significant increases in stillbirths were seen across various exposure levels.

Fetal malformations. A number of epidemiology studies have examined the relationship between fetal malformations (such as neural tube, oral cleft, cardiac, or urinary defects, and chromosomal abnormalities) and chlorinated water or DBPs. It is difficult to assess fetal malformations in aggregate due to inconsistent findings and disparate endpoints being examined in the available studies. Some studies support the possibility that exposure to chlorinated water or DBPs is associated with various fetal malformations (Cedergren et al. 2002; Hwang et al. 2002; Dodds and King 2001; Klotz and Pyrch 1999; Bove et al. 1995; Aschengrau et al. 1993). Other studies found little evidence (Shaw et al. 2003; Källén and Robert 2000; Dodds et al. 1999; Shaw et al. 1991) or inconclusive results (Magnus et al. 1999) between chlorinated water or DBP exposure and fetal malformations. Birth defects most consistently identified as being associated with DBPs include neural tube defects and urinary tract malformations.

Other endpoints have also been examined in recent epidemiology studies. One study suggests an association between DBPs and decreased menstrual cycle length (Windham et al. 2003), which, if corroborated, could be linked to the biological basis of other reproductive endpoints observed. No association between THM exposure and semen quality was found (Fenster et al. 2003). More work is needed in both areas to support these results.

Reviews. An early review supported an association between measures of fetal viability and tap water (Swan et al.

1992). Three other reviews found data inadequate to support an association between reproductive and developmental health effects and THM exposure (Reif et al. 1996; Craun 1998; WHO 2000). Mills et al. (1998) examined data on and found support for an association between fetal viability and malformations and THMs. Another review presented to the Stage 2 MDBP FACA found some evidence for an association with fetal viability and some fetal malformations and exposure to DBPs but reported that the evidence was inconsistent for these endpoints as well as for fetal growth (Reif et al. 2000). Reif et al. (2000) concluded that the weight of evidence from epidemiology studies suggests that "DBPs are likely to be reproductive toxicants in humans under appropriate exposure conditions," but from a risk assessment perspective, data are primarily at the hazard identification stage. Nieuwenhuijsen et al. (2000) found some evidence for an association between fetal growth and THM exposure and concluded evidence for associations with other fetal endpoints is weak but gaining weight. A qualitative review by Villanueva et al. (2001) found evidence generally supports a possible association between reproductive effects and drinking chlorinated water. Graves et al. (2001) supports a possible association for fetal growth but not fetal viability or malformations. More recently, Bove et al. (2002) examined and supported an association between small for gestational age, neural tube defects and spontaneous abortion endpoints and DBPs. Following a meta-analysis on five malformation studies, Hwang and Jaakkola (2003) concluded that there was evidence which supported associations between DBPs and risk of birth defects, especially neural tube defects and urinary tract defects.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Porter et al. 2005.	Cross-sectional study in Maryland, 1998–2002.	Estimated THM and HAA exposure during pregnancy.	Intrauterine growth retardation.	No consistent association or dose-response relationship was found between exposure to either TTHM or HAA5 and intrauterine growth retardation. Results suggest an increased risk of intrauterine growth retardation associated with TTHM and HAA5 exposure in the third trimester, although only HAA5 results were statistically significant.
Savitz et al. 2005.	Population-based prospective cohort study in three communities around the U.S., 2000–2004.	Estimated TTHM, HAA9, and TOC exposures during pregnancy. Indices examined included concentration, ingested amount, exposure from showering and bathing, and an integration of all exposures combined.	Early and late pregnancy loss, preterm birth, small for gestational age, and term birth weight.	No association with pregnancy loss was seen when looking at high exposure of TTHM compared to low exposure of TTHM. When examining individual THMs, a statistically significant association was found between bromodichloromethane (BDCM) and pregnancy loss. A similar, non-statistically significant association was seen between dibromochloromethane (DBCM) and pregnancy loss. Some increased risk was seen for losses at greater than 12 weeks' gestation for TTHM, BDCM, and TOX (total organic halide), but most results generally did not provide support for an association. Preterm birth showed a small inverse relationship with DBP exposure (i.e. higher exposures showed less preterm births), but this association was weak. TTHM exposure of 80 ug/L was associated with twice the risk for small for gestational age during the third trimester and was statistically significant.
Toledano et al. 2005.	Large cross-sectional study in England, 1992–1998.	Linked mother's residence at time of delivery to modeled estimates of TTHM levels in water zones.	Stillbirth, low birth weight.	A significant association between TTHM and risk of stillbirth, low birth weight, and very low birth weight was observed in one of the three regions. When all three regions were combined, small, but non-significant, excess risks were found between all three outcomes and TTHM and chloroform. No associations were observed between reproductive risks and BDCM or total brominated THMs.
Dodds et al. 2004 (and King et al. 2005).	Population-based case-control study in Nova Scotia and Eastern Ontario, 1999–2001.	Estimated THM and HAA exposure at residence during pregnancy. Linked water consumption and showering/bathing to THM exposure.	Stillbirth	A statistically significant association was observed between stillbirths and exposure to total THM, BDCM, and chloroform. Associations were also detected for metrics, which incorporated water consumption, showering and bathing habits. Elevated relative risks were observed for intermediate exposures for total HAA and DCAA measures; TCAA and brominated HAA exposures showed no association. No statistically significant associations or dose-response relationships between any HAAs and stillbirth were detected after controlling for THM exposure.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES—Continued

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Infante-Rivard 2004.	Case-control study of newborns in Montreal, 1998–2000.	Estimated THM levels and water consumption during pregnancy. Exposure from showering and presence of two genetic polymorphisms.	Intrauterine growth retardation.	No associations were found between exposure to THMs and intrauterine growth retardation. However, a significant effect was observed between THM exposure and intrauterine growth retardation for newborns with the CYP2E1 gene variant. Findings suggest that exposure to THMs at the highest levels can affect fetal growth but only in genetically susceptible newborns.
Wright et al. 2004.	Large cross-sectional study: Massachusetts, 1995–1998.	Estimated maternal third-trimester exposures to TTHMs, chloroform, BDCM, total HAAs, DCA, TCA, MX and mutagenicity in drinking water.	Birth weight, small for gestational age, preterm delivery, gestational age.	Statistically significant reductions in mean birth weight were observed for BDCM, chloroform, and mutagenic activity. An exposure-response relationship was found between THM exposure and reductions in mean birth weight and risk of small for gestational age. There was no association between preterm delivery and elevated levels of HAAs, MX, or mutagenicity. A reduced risk of preterm delivery was observed with high THM exposures. Gestational age was associated with exposure to THMs and mutagenicity.
Yang et al. 2004 (and Yang et al. 2000).	Large cross-sectional studies in Taiwan, 1994–1996.	Compared maternal consumption of chlorinated drinking water (yes/no).	Low birth weight, preterm delivery.	Residence in area supplied with chlorinated drinking water showed a statistically significant association with preterm delivery. No association was seen between chlorinated drinking water and low birth weight.
Fenster et al. 2003.	Small prospective study in California, 1990–1991.	Examined TTHM levels within the 90 days preceding semen collection.	Sperm motility, sperm morphology.	No association between TTHM level and sperm mobility or morphology. BDCM was inversely associated with linearity of sperm motion. There was some suggestion that water consumption and other ingestion metrics may be associated with different indicators of semen quality.
Shaw et al. 2003.	2 case-control maternal interview studies: CA, 1987–1991.	Estimated THM levels for mothers' residences from before conception through early pregnancy.	Neural tube defects, oral clefts, selected heart defects.	No associations or exposure-response relation were observed between malformations and TTHMs in either study.
Windham et al. 2003.	Prospective study: CA, 1990–1991.	Estimated exposure to THMs through showering and ingestion over average of 5.6 menstrual cycles per woman.	Menstrual cycle, follicular phase length (in days).	Findings suggest that THM exposure may affect ovarian function. All brominated THM compounds were associated with significantly shorter menstrual cycles with the strongest finding for chlorodibromomethane. There was little association between TTHM exposure and luteal phase length, menses length, or cycle variability.
Wright et al. 2003.	Cross-sectional study: Massachusetts, 1990.	Estimated TTHM exposure in women during pregnancy (average for pregnancy and during each trimester).	Birth weight, small for gestational age, preterm delivery, gestational age.	Statistically significant associations between 2nd trimester and pregnancy average TTHM exposure and small for gestational age and fetal birth weight were detected. Small, statistically significant increases in gestational duration/age were observed at increased TTHM levels, but there was little evidence of an association between TTHM and preterm delivery or low birth weight.
Cedergren et al. 2002.	Retrospective case-control study: Sweden, 1982–1997.	Examined maternal periconceptional DBP levels and used GIS to assign water supplies.	Cardiac defects	Exposure to chlorine dioxide in drinking water showed statistical significance for cardiac defects. THM concentrations of 10 ug/L and higher were significantly associated with cardiac defects. No excess risk for cardiac defect and nitrate were seen.
Hwang et al. 2002.	Large cross-sectional study in Norway, 1993–1998.	Compared exposure to chlorination (yes/no) and water color levels for mother's residence during pregnancy.	Birth defects (neural tube defects, cardiac, respiratory system, oral cleft, urinary tract).	Risk of any birth defect, cardiac, respiratory system, and urinary tract defects were significantly associated with water chlorination. Exposure to chlorinated drinking water was statistically significantly associated with risk of ventricular septal defects, and an exposure-response pattern was seen. No other specific defects were associated with the exposures that were examined.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES—Continued

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Dodds and King 2001.	Population-based retrospective cohort in Nova Scotia, 1988–1995.	Estimated THM, chloroform, and bromodichloromethane (BDCM) exposure.	Neural tube defects, cardiovascular defects, cleft defects, chromosomal abnormalities.	Exposure to BDCM was associated with increased risk of neural tube defects, cardiovascular anomalies. Chloroform was not associated with neural tube defects, but was associated with chromosomal abnormalities. No association between THM and cleft defects were detected.
Jaakkola et al. 2001.	Large cross-sectional study in Norway, 1993–1995.	Compared chlorination (yes/no) and water color (high/low) for mother during pregnancy.	Low birth weight, small for gestational age, preterm delivery.	No evidence found for association between prenatal exposure to chlorinated drinking water and low birth weight or small for gestational age. A reduced risk of preterm delivery was noted for exposure to chlorinated water with high color content.
Källén and Robert 2000.	Large cross-sectional cohort study in Sweden, 1985–1994.	Linked prenatal exposure to drinking water disinfected with various methods (no chlorine, chlorine dioxide only, sodium hypochlorite only).	Gestational duration, birth weight, intrauterine growth, mortality, congenital malformations, and other birth outcomes.	A statistically significant difference was found for short gestational duration and low birth weight among infants whose mother resided in areas using sodium hypochlorite, but not for chlorine dioxide. Sodium hypochlorite was also associated with other indices of fetal development but not with congenital defects. No other effects were observed for intrauterine growth, childhood cancer, infant mortality, low Apgar score, neonatal jaundice, or neonatal hypothyroidism in relation to either disinfection method.
Dodds et al. 1999 (and King et al. 2000b).	Population-based retrospective cohort study in Nova Scotia, 1988–1995.	Estimated TTHM level for women during pregnancy.	Low birth weight, preterm birth, small for gestational age, stillbirth, chromosomal abnormalities, neural tube defects, cleft defects, major cardiac defects.	A statistically significant increased risk for stillbirths and high total THMs and specific THMs during pregnancy was detected, with higher risks observed among asphyxia-related stillbirths. Bromodichloromethane had the strongest association and exhibited an exposure-response pattern. There was limited evidence of an association between THM level and other reproductive outcomes. No congenital anomalies were associated with THM exposure, except for a non-statistically significant association with chromosomal abnormalities.
Klotz and Pyrch 1999 (and Klotz and Pyrch 1998).	Population-based case-control study in New Jersey, 1993–1994.	Estimated exposure of pregnant mothers to TTHMs and HAAs, and compared source of water.	Neural tube defects	A significant association was seen between exposure to THMs and neural tube defects. No associations were observed for neural tube defects and haloacetic acids or haloacetonitriles.
Magnus et al. 1999.	Large cross-sectional study in Norway, 1993–1995.	Compared chlorination (yes/no) and water color (high/low) at mothers' residences at time of birth.	Birth defects (neural tube defects, major cardiac, respiratory, urinary, oral cleft).	Statistically significant associations were seen between urinary tract defects and chlorination and high water color (high content of organic compounds). No associations were detected for other outcomes or all birth defects combined. A non-statistically significant, overall excess risk of birth defects was seen within municipalities with chlorination and high water color compared to municipalities with no chlorination and low color.
Gallagher et al. 1998.	Retrospective cohort study of newborns in Colorado, 1990–1993.	Estimated THM levels in drinking water during third trimester of pregnancy.	Low birth weight, term low birthweight, and preterm delivery.	Weak, non-statistically significant association with low birth weight and TTHM exposure during the third trimester. Large statistically significant increase for term low birthweight at highest THM exposure levels. No association between preterm delivery and THM exposure.
Swan et al. 1998.	Prospective study in California, 1990–1991.	Compared consumption of cold tap water to bottled water during early pregnancy.	Spontaneous abortion ...	Pregnant women who drank cold tap water compared to those who consumed no cold tap water showed a significant finding for spontaneous abortion at one of three sites.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES—Continued

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Waller et al. 1998 (and Waller et al. 2001).	Prospective cohort in California, 1989–1991.	Estimated TTHM levels during first trimester of pregnancy via ingestion and showering.	Spontaneous abortion ...	Statistically significant increased risk between high intake of TTHMs and spontaneous abortion compared to low intake. BDCM statistically associated with increased spontaneous abortion; other THMs not. Reanalysis of exposure yielded less exposure misclassification and relative risks similar in magnitude to earlier study. An exposure-response relationship was seen between spontaneous abortion and ingestion exposure to TTHMs.
Kanitz et al. 1996.	Cross-sectional study in Italy, 1988–1989.	Compared 3 types of water treatment (chlorine dioxide, sodium hypochlorite, and chlorine dioxide/sodium hypochlorite).	Low birth weight, body length, cranial circumference, preterm delivery, and other effects.	Smaller body length and small cranial circumference showed statistical significant association with maternal exposure to chlorinated drinking water. Neonatal jaundice linked statistically to prenatal exposure to drinking water treated with chlorine dioxide. Length of pregnancy, type of delivery, and birthweight showed no association.
Bove et al. 1995 (and Bove et al. 1992a & 1992b).	Large cohort cross-sectional study in New Jersey, 1985–1988.	Examined maternal exposure to TTHM and various other contaminants.	Low birth weight, fetal deaths, small for gestational age, birth defects (neural tube defects, oral cleft, central nervous system, major cardiac).	Weak, statistically significant increased risk found for higher TTHM levels with small for gestational age, neural tube defects, central nervous system defects, oral cleft defects, and major cardiac defects. Some association with higher TTHM exposure and low birth weight. No effect seen for preterm birth, very low birth weight, or fetal deaths.
Savitz et al. 1995.	Population-based case-control study: North Carolina, 1988–1991.	Examined TTHM concentration at residences and water consumption (during first and third trimesters).	Spontaneous abortion, preterm delivery, low birth weight.	There was a statistically significant increased miscarriage risk with high THM concentration, but THM intake (based on concentration times consumption level) was not related to pregnancy outcome. No associations were seen for preterm delivery or low birth weight. Water source was not related to pregnancy outcome either, with the exception of a non-significant, increased risk of spontaneous abortion for bottled water users. There was a non-statistically significant pattern of reduced risk with increased consumption of water for all three outcomes.
Aschengrau et al. 1993.	Case-control study in Massachusetts, 1977–1980.	Source of water and 2 types of water treatment (chlorination, chloramination).	Neonatal death, stillbirth, congenital anomalies.	There was a non-significant, increased association between frequency of stillbirths and maternal exposure to chlorinated versus chloraminated surface water. An increased risk of urinary track and respiratory track defects and chlorinated water was detected. Neonatal death and other major malformations showed no association. No increased risk seen for any adverse pregnancy outcomes for surface water versus ground and mixed water use.
Kramer et al. 1992.	Population-based case-control study in Iowa, 1989–1990.	Examined chloroform, DCBM, DBCM, and bromoform levels and compared type of water source (surface, shallow well, deep well).	Low birth weight, prematurity, intrauterine growth retardation.	Statistically significant increased risk for intrauterine growth retardation effects from chloroform exposure were observed. Non-significant increased risks were observed for low birth weight and chloroform and for intrauterine growth retardation and DCBM. No intrauterine growth retardation or low birth weight effects were seen for the other THMs, and no effects on prematurity were observed for any of the THMs.
Shaw et al. 1991 (and Shaw et al. 1990).	Small case-control study: Santa Clara County, CA, 1981–1983.	Estimated chlorinated tap water consumption, mean maternal TTHM level, showering/bathing exposure at residence during first trimester.	Congenital cardiac anomalies.	Following reanalysis, no association between cardiac anomalies and TTHM level were observed.
Aschengrau et al. 1989.	Case-control study in Massachusetts, 1976–1978.	Source of water and exposure to metals and other contaminants.	Spontaneous abortion ...	A statistically significantly association was detected between surface water source and frequency of spontaneous abortion.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES—Continued

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Reviews/ Meta-analyses				
Hwang and Jakkola 2003.	Review and meta-analysis of 5 studies.	Compared DBP levels, source of water, chlorine residual, color (high/low), and 2 types of disinfection: chlorination and chloramination.	Birth defects (respiratory system, urinary system, neural tube defects, cardiac, oral cleft).	The meta-analysis supports an association between exposure to chlorination by-products and the risk of any birth defect, particularly the risk of neural tube defects and urinary system defects.
Bove et al. 2002.	Qualitative review of 14 studies.	Examined THM levels. Compared drinking water source and type of water treatment.	Birth defects, small for gestational age, low birth weight, preterm delivery, spontaneous abortion, fetal death.	Review found the studies of THMs and adverse birth outcomes provide moderate evidence for associations with small for gestational age, neural tube defects, and spontaneous abortions. Authors felt risks may have been underestimated and exposure-response relationships distorted due to exposure misclassification.
Graves et al. 2001.	Review of toxicological and epidemiological studies using a weight of evidence approach.	Examined water consumption, duration of exposure, THM levels, HAA levels, and other contaminants. Compared source of water, water treatment, water color (high/low), etc.	Low birth weight, preterm delivery, small for gestational age, intrauterine growth retardation, specific birth defects, neonatal death, decreased fertility, fetal resorption, and other effects.	Weight of evidence suggested positive association with DBP exposure for growth retardation such as small for gestational age or intrauterine growth retardation and urinary tract defects. Review found no support for DBP exposure and low birth weight, preterm delivery, some specific birth defects, and neonatal death, and inconsistent findings for all birth defects, all central nervous system defects, neural tube defects, spontaneous abortion, and stillbirth.
Villanueva et al. 2001.	Qualitative review of 14 reproductive and developmental health effect studies.	Compared exposure to TTHM levels, mutagenic drinking water, water consumption, source water, types of disinfection (chlorination and chloramination), and residence times.	Spontaneous abortion, low birth weight, small for gestational age, neural tube defects, other reproductive and developmental outcomes.	Review found positive associations between increased spontaneous abortion, low birth weight, small for gestational age, and neural tube defects and drinking chlorinated water in most studies, although not always with statistical significance.
Nieuwenhuijsen et al. 2000.	Qualitative review of numerous toxicological and epidemiological studies.	Examined levels of various DBPs, water consumption, and duration of exposure. Compared water color, water treatment, source of water, etc.	Low birth weight, preterm delivery, spontaneous abortions, stillbirth, birth defects, etc.	The review supports some evidence of association between THMs and low birth weight, but inconclusive. Review found no evidence of association between THMs and preterm delivery, and that associations for other outcomes (spontaneous abortions, stillbirth, and birth defects) were weak but gaining weight.
Reif et al. 2000.	Qualitative reviews of numerous epidemiological studies.	Compared source of water supply and methods of disinfection. Estimated TTHM levels.	Birth weight, low birth weight, intrauterine growth retardation, small for gestational age, preterm deliver, somatic parameters, neonatal jaundice, spontaneous abortion, stillbirth, developmental anomalies.	Weight of evidence suggested DBPs are reproductive toxicants in humans under appropriate exposure conditions. The review reports findings between TTHMs and effects on fetal growth, fetal viability, and congenital anomalies as inconsistent. Reviewers felt data are at the stage of hazard identification and did not suggest a dose-response pattern of increasing risk with increasing TTHM concentration.
WHO 2000	Qualitative reviews of various studies in Finland, U.S., and Canada.	Various exposures to THMs.	Various reproductive and developmental effects.	Review found some support for an association between increased risks of neural tube defects and miscarriage and THM exposure. Other associations have been observed, but the authors believed insufficient data exist to assess any of these associations.
Craun, ed. 1998.	Qualitative review of 10 studies, focus on California cohort study.	Examined THM levels and water consumption, and compared source of water and water treatment (chlorine, chloramines, chlorine dioxide).	Stillbirth, neonatal death, spontaneous abortion, low birth weight, preterm delivery, intrauterine growth retardation, neonatal jaundice, birth defects.	Associations between DBPs and various reproductive effects were seen in some epidemiological studies, but the authors felt these results do not provide convincing evidence for a causal relationship between DBPs and reproductive effects.

TABLE II.D–3.—SUMMARY OF REPRODUCTIVE/DEVELOPMENTAL EPIDEMIOLOGY STUDIES—Continued

Author(s)	Study type	Exposure(s) studied	Outcome(s) measured	Findings
Mills et al. 1998.	Qualitative review of 22 studies.	Examined TTHM levels and water consumption. Compared source of water and 2 types of water treatment (chlorination and chloramination).	Various reproductive and developmental effects.	Review found studies suggest possible increases in adverse reproductive and developmental effects, such as increased spontaneous abortion rates, small for gestational age, and fetal anomalies, but that insufficient evidence exists to establish a causal relationship.
Reif et al. 1996.	Review of 3 case-control studies and 1 cross-sectional study.	Examined THM levels at residences, dose consumption, chloroform. Compared source of waters and 2 types of water treatment (chlorination and chloramination).	Birth defects (central nervous system, neural tube defects, cardiac, oral cleft, respiratory, urinary tract), spontaneous abortion, low birth weight, growth retardation, preterm delivery, intrauterine growth retardation, stillbirth, neonatal death.	Studies reviewed suggest that exposure to DBPs may increase intrauterine growth retardation, neural tube defects, major heart defects, and oral cleft defects. Review found epidemiologic evidence supporting associations between exposure to DBPs and adverse pregnancy outcomes to be sparse and to provide an inadequate basis to identify DBPs as a reproductive or developmental hazard.
Swan et al. 1992.	Qualitative review of 5 studies in Santa Clara County, CA (Deane et al. 1992, Wrensch et al. 1992, Hertz-Picciotto et al. 1992, Windham et al. 1992, Fenster et al. 1992).	Compared maternal consumption of residence tap water to bottled water.	Spontaneous abortion ...	Four of the studies reviewed suggest that women drinking bottled water during the first trimester of pregnancy may have reduced risk of spontaneous abortion relative to drinking tap water. No association seen in the fifth study. Review concluded that if findings are causal and not due to chance or bias, data suggest a 10–50% increase in spontaneous abortion risk for pregnant women drinking tap water over bottled water.

ii. Toxicology. To date, the majority of reproductive and developmental toxicology studies have been short term and higher dose. Many of these studies are summarized in a review by Tyl (2000). A summary of this review and of additional studies is provided in the proposed Stage 2 DBPR (USEPA 2003a). Individual DBP supporting documents evaluate and assess additional studies as well (USEPA 2000b; USEPA 2000c; USEPA 2001a; USEPA 2001b; USEPA 2003b; USEPA 2005b; USEPA 2005c; USEPA 2005d; USEPA 2005e; USEPA 2005k). A number of recent studies have been published that include in vivo and in vitro assays to address mechanism of action. Overall, reproductive and developmental toxicology studies indicate a possible reproductive/developmental health hazard although they are preliminary in nature for the majority of DBPs, and the dose-response characteristics of most DBPs have not been quantified. Some of the reproductive effects of DCAA were quantified as part of the RfD development process, and impacts of DCAA on testicular structure are one of the critical effects in the study that is the basis of the RfD (USEPA 2003b).

A few long term, lower dose studies have been completed. Christian et al. (2002a and 2002b) looked for an association between BDCM and DBAA and reproductive and developmental endpoints. The authors identified a NOAEL and LOAEL of 50 ppm and 150 ppm, respectively, based on delayed sexual maturation for BDCM and a NOAEL and LOAEL of 50 ppm and 250 ppm based on abnormal spermatogenesis for DBAA. The authors concluded that similar effects in humans would only be seen at levels many orders of magnitude higher than that of current drinking water levels. As discussed in more detail in the proposal, EPA believes that because of key methodological differences indicated as being important in other studies (Bielmeier et al. 2001; Bielmeier et al. 2004; Kaydos et al. 2004; Klinefelter et al. 2001; Klinefelter et al. 2004), definitive conclusions regarding BDCM and DBAA cannot be drawn. Other multi-generation research underway includes a study on BCAA, but this research is not yet published.

Biological plausibility for the effects observed in reproductive and developmental epidemiological studies has been demonstrated through various toxicological studies on some individual DBPs (e.g., Bielmeier et al. 2001; Bielmeier et al. 2004; Narotsky et al. 1992; Chen et al. 2003; Chen et al. 2004). Some of these studies were conducted at high doses, but similarity of effects observed between toxicology studies and epidemiology studies strengthens the weight of evidence for a possible association between adverse reproductive and developmental health effects and exposure to chlorinated surface water.

c. Conclusions. EPA's weight of evidence evaluation of the best available science on carcinogenicity and reproductive and developmental effects, in conjunction with the widespread exposure to DBPs, supports the incremental regulatory changes in today's rule that target lowering DBPs and providing equitable public health protection.

EPA believes that the cancer epidemiology and toxicology literature provide important information that contributes to the weight of evidence for potential health risks from exposure to chlorinated drinking water. At this time, the cancer epidemiology studies support a potential association between exposure to chlorinated drinking water and cancer, but evidence is insufficient to establish a causal relationship. The epidemiological evidence for an association between DBP exposure and colon and rectal cancers is not as consistent as it is for bladder cancer, although similarity of effects reported in animal toxicity and human epidemiology studies strengthens the evidence for an association with colon and rectal cancers. EPA believes that the overall cancer epidemiology and toxicology data support the decision to

pursue additional DBP control measures as reflected in the Stage 2 DBPR.

Based on the weight of evidence evaluation of the reproductive and developmental epidemiology data, EPA concludes that a causal link between adverse reproductive or developmental health effects and exposure to chlorinated drinking water or DBPs has not been established, but that there is a potential association. Despite inconsistent findings across studies, some recent studies continue to suggest associations between DBP exposure and various adverse reproductive and developmental effects. In addition, data from a number of toxicology studies, although the majority of them were conducted using high doses, demonstrate biological plausibility for some of the effects observed in epidemiology studies. EPA concludes that no dose-response relationship or causal link has been established between exposure to chlorinated drinking water or disinfection byproducts and adverse developmental or reproductive health effects. EPA's evaluation of the best available studies, particularly epidemiology studies is that they do not support a conclusion at this time as to whether exposure to chlorinated drinking water or disinfection byproducts causes adverse developmental and reproductive health effects, but do provide an indication of a potential health concern that warrants incremental regulatory action beyond the Stage 1 DBPR.

D. DBP Occurrence and DBP Control

New information on the occurrence of DBPs in distribution systems raises issues about the protection provided by the Stage 1 DBPR. This section presents new occurrence and treatment information used to identify key issues and to support the development of the Stage 2 DBPR. For a more detailed discussion see the proposed Stage 2 DBPR (USEPA 2003a). For additional information on occurrence of regulated and nonregulated DBPs, see the Occurrence Assessment for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule (USEPA 2005f).

1. Occurrence

EPA, along with the M-DBP Advisory Committee, collected, developed, and evaluated new information that became available after the Stage 1 DBPR was published. The Information Collection Rule (ICR) (USEPA 1996) provided new field data on DBP exposure for large water systems and new study data on the effectiveness of several DBP control technologies. The unprecedented amount of information collected under the ICR was supplemented by a survey conducted by the National Rural Water Association, data provided by various States, the Water Utility Database (which contains data collected by the American Water Works Association), and ICR Supplemental Surveys for small and medium water systems.

After analyzing the DBP occurrence data, EPA and the Advisory Committee reached three significant conclusions that in part led the Advisory Committee to recommend further control of DBPs in public water systems. First, the data from the Information Collection Rule showed that the RAA compliance calculation under the Stage 1 DBPR allows elevated TTHM or HAA5 levels to regularly occur at some locations in the distribution system while the overall average of TTHM or HAA5 levels at all DBP monitoring locations is below the MCLs of the Stage 1 DBPR. Customers served at those sampling locations with DBP levels that are regularly above 0.080 mg/L TTHM and 0.060 mg/L HAA5 experience higher exposure compared to customers served at locations where these levels are consistently met.

Second, the new data demonstrated that DBP levels in single samples can be substantially above 0.080 mg/L TTHM and 0.060 mg/L HAA5. Some customers receive drinking water with concentrations of TTHM and HAA5 up to 75% above 0.080 mg/L and 0.060 mg/L, respectively, even when their water system is in compliance with the Stage 1 DBPR. Some studies support an association between acute exposure to DBPs and potential adverse reproductive and developmental health effects (see Section III.C for more detail).

Third, the data from the Information Collection Rule revealed that the highest TTHM and HAA5 levels can occur at any monitoring site in the distribution system. In fact, the highest concentrations did not occur at the maximum residence time locations in more than 50% of all ICR samples. The fact that the locations with the highest DBP levels vary in different public water systems indicates that the Stage 1 DBPR monitoring may not accurately represent the high DBP concentrations that actually exist in distribution systems, and that additional monitoring is needed to identify distribution system locations with elevated DBP levels.

These data showed that efforts beyond the Stage 1 DBPR are needed to provide more equitable protection from DBP exposure across the entire distribution system. The incremental regulatory changes made under the Stage 2 DBPR meet this need by reevaluating the locations of DBP monitoring sites and addressing high DBP concentrations that occur at particular locations or in single samples within systems in compliance.

2. Treatment

The analysis of the new treatment study data confirmed that certain technologies are effective at reducing DBP concentrations. Bench- and pilot-scale studies for granular activated carbon (GAC) and membrane technologies required by the Information Collection Rule provided information on the effectiveness of the two technologies. Other studies found UV light to be highly effective for inactivating Cryptosporidium and Giardia at low doses without promoting the formation of DBPs (Malley *et al.* 1996; Zheng *et al.* 1999). This new treatment information adds to the treatment options available to utilities for controlling DBPs beyond the requirements of the Stage 1 DBPR.

E. Conclusions for Regulatory Action

After extensive analysis of available data and rule options considered by the Advisory Committee and review of public comments on the proposed Stage 2 DBPR (USEPA, 2003a), EPA is finalizing a Stage 2 DBPR control strategy consistent with the key elements of the Agreement in Principle signed in September 2000 by the participants in the Stage 2 M–DBP Advisory Committee. EPA believes that exposure to chlorinated drinking water may be associated with cancer, reproductive, and developmental health risks. EPA determined that the risk-targeting measures recommended in the Agreement in Principle will require only those systems with the greatest risk to make treatment and operational changes and will maintain simultaneous protection from potential health concerns from DBPs and microbial contaminants. EPA has carefully evaluated and expanded upon the recommendations of the Advisory Committee and public comments to develop today's rule. EPA also made simplifications where possible to minimize complications for public water systems as they transition to compliance with the Stage 2 DBPR while expanding public health protection. The requirements of the Stage 2 DBPR are described in detail in Section IV of this preamble.

IV. Explanation of Today's Action

A. MCLGs

MCLGs are set at concentration levels at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety.

Establishment of an MCLG for each specific contaminant is based on the available evidence of carcinogenicity or noncancer adverse health effects from drinking water exposure using EPA's guidelines for risk assessment. MCLGs are developed to ensure they are protective of the entire population.

Today's rule provides MCLGs for chloroform and two haloacetic acids, monochloroacetic acid (MCAA) and trichloroacetic acid (TCAA).

1. Chloroform MCLG

a. Today's rule. The final MCLG for chloroform is 0.07 mg/L. The MCLG was calculated using toxicological evidence that the carcinogenic effects of chloroform are due to sustained tissue toxicity. EPA is not changing the other THM MCLGs finalized in the Stage 1 DBPR.

b. Background and analysis. The MCLG for chloroform is unchanged from the proposal. The MCLG is calculated using a reference dose (RfD) of 0.01 mg/kg/day and an adult tap water consumption of 2 L per day for a 70 kg adult. A relative source contribution (RSC) of 20% was used in accordance with Office of Water's current approach for deriving RSC through consideration of data that indicate that other routes and sources of exposure may potentially contribute substantially to the overall exposure to chloroform. See the proposed Stage 2 DBPR (USEPA 2003a) for a detailed discussion of the chloroform MCLG.

$$\text{MCLG for Chloroform} = \frac{(0.01\ \text{mg/kg/day})(70\ \text{kg})(0.2)}{2\ \text{L/day}} = 0.07\ \text{mg/L (rounded)}$$

Based on an analysis of the available scientific data on chloroform, EPA believes that the chloroform dose-response is nonlinear and that chloroform is likely to be carcinogenic only under high exposure conditions (USEPA 2001a). This assessment is supported by the principles of the 1999 EPA Proposed Guidelines for Carcinogen Risk Assessment (USEPA 1999a) and reconfirmed by the 2005 final Cancer Guidelines (USEPA 2005i). The science in support of a nonlinear approach for estimating the carcinogenicity of chloroform was affirmed by the Chloroform Risk Assessment Review Subcommittee of the EPA SAB Executive Committee (USEPA 2000d). Since the nonzero MCLG is based on a mode of action consideration specific to chloroform, it does not affect the MCLGs of other trihalomethanes.

c. Summary of major comments. EPA received many comments in support of the proposed MCLG calculation for chloroform, although some commenters disagreed with a non-zero MCLG.

At this time, based on an analysis of all the available scientific data on chloroform, EPA concludes that chloroform is likely to be carcinogenic to humans only under high exposure conditions that lead to cytotoxicity and regenerative hyperplasia and that chloroform is not likely to be carcinogenic to humans under conditions that do not cause cytotoxicity and cell regeneration (USEPA 2001a). Therefore, the dose-response is nonlinear, and the MCLG is set at 0.07 mg/L. This conclusion has been reviewed by the SAB (USEPA 2000d), who agree that nonlinear approach is most appropriate for the risk assessment of chloroform; it also remains consistent with the principles of the 1999 EPA Proposed Guidelines for Carcinogenic Risk Assessment (USEPA 1999a) and the final Cancer Guidelines (USEPA 2005i), which allow for nonlinear extrapolation.

EPA also received some comments requesting a combined MCLG for THMs or HAAs. This is not appropriate because these different chemicals have different health effects.

2. HAA MCLGs: TCAA and MCAA

a. Today's rule. Today's rule finalizes the proposed Stage 2 MCLG for TCAA of 0.02 mg/L (USEPA 2003a) and sets an MCLG for MCAA of 0.07 mg/L. EPA is not changing the other HAA MCLGs finalized in the Stage 1 DBPR (USEPA 1998a).

b. Background and analysis. The Stage 1 DBPR included an MCLG for TCAA of 0.03 mg/L and did not include an MCLG for MCAA (USEPA 1998a). Based on toxicological data published after the Stage 1 DBPR, EPA proposed new MCLGs for TCAA and MCAA of 0.02 mg/L and 0.03 mg/L, respectively, in the Stage 2 proposal (USEPA 2003a). The proposed TCAA MCLG and its supporting analysis is being finalized unchanged in today's final rule. The MCLG calculation for MCAA is revised in this final rule, based on a new reference dose, as discussed later. See the proposed Stage 2 DBPR (USEPA 2003a) for a detailed discussion of the calculation of the MCLGs.

TCAA. The MCLG for TCAA was calculated based on the RfD of 0.03 mg/kg/day using a 70 kg adult body weight, a 2 L/day drinking water intake, and a relative source contribution of 20%. An additional tenfold risk management factor has been applied to account for the possible carcinogenicity of TCAA. This approach is consistent with EPA policy. TCAA induces liver tumors in mice (Ferreira-Gonzalez et al. 1995; Pereira 1996; Pereira and Phelps 1996; Tao et al. 1996; Latendresse and Pereira 1997; Pereira et al. 1997) but not in rats (DeAngelo et al. 1997). Much of the recent data on the carcinogenicity of TCAA have focused on examining the carcinogenic mode(s) of action. However, at this time, neither the bioassay nor the mechanistic data are sufficient to support the development of a slope factor from which to quantify the cancer risk.

$$\text{MCLG for TCAA} = \frac{(0.03\ \text{mg/kg/day})(70\ \text{kg})(0.2)}{(2\ \text{L/day})(10)} = 0.02\ \text{mg/L (rounded)}$$

The chronic bioassay for TCAA by DeAngelo et al. (1997) was selected as the critical study for the development of the RfD. In this chronic drinking water study, a dose-response was noted for several endpoints and both a LOAEL and NOAEL were determined. The data are consistent with the findings in both the Pereira (1996) chronic drinking water study and the Mather et al. (1990) subchronic drinking water study. The RfD of 0.03 mg/kg/day is based on the NOAEL of 32.5 mg/kg/day for liver histopathological changes in rats (DeAngelo et al. 1997). A composite uncertainty factor of 1000 was applied in the RfD determination. A default uncertainty factor of 10 was applied to

the RfD to account for extrapolation from an animal study because data to quantify rat-to-human differences in toxicokinetics or toxicodynamics are not available. The default uncertainty factor of 10 was used to account for human variability in the absence of data on differences in human susceptibility. Although subchronic and chronic studies of TCAA have been reported for multiple species, many studies have focused on liver lesions and a full evaluation of a wide range of potential target organs has not been conducted in two different species. In addition, there has been no multi-generation study of reproductive toxicity and the data from teratology studies in rats provide LOAEL values but no NOAEL for developmental toxicity. Thus, an additional uncertainty factor of 10 was used to account for database insufficiencies.

The MCLG calculation also includes a relative source contribution (RSC) of 20%. The RSC was derived consistent with Office of Water's current approach for deriving RSC. In addition to disinfected water, foods are expected to contribute to daily exposure to TCAA (Raymer et al. 2001, 2004; Reimann et al. 1996). Some of the TCAA in foods comes from cleaning and cooking foods in chlorinated water. Additional TCAA is found in some foods because of the widespread use of chlorine as a sanitizing agent in the food industry (USFDA 1994). EPA was not able to identify any dietary surveys or duplicate diet studies of TCAA in the diet. TCAA also has been identified in rain water, suggesting some presence in the atmosphere (Reimann et al. 1996); however, due to the low volatility (0.5—0.7 mm Hg at 25 °C) of TCAA, exposure from ambient air is expected to be minimal. Dermal exposure to disinfected water is also unlikely to be significant. A study by Xu et al. (2002) reports that dermal exposure from bathing and showering is only 0.01% of that from oral exposure. In addition, the solvents trichloroethylene, tetrachlorethylene, 1,1,1-trichloroethane (often found in ambient air and drinking water), and the disinfection byproduct chloral hydrate all contribute to the body's TCAA load since each of these compounds is metabolized to TCAA (ATSDR 2004; ATSDR 1997a; ATSDR 1997b; USEPA 2000e). Due to the limitations primarily in the dietary data and a clear indication of exposure from other sources, EPA applied a relative source contribution of 20%.

MCAA. The MCLG for MCAA uses the following calculations: An RfD of 0.01 mg/kg/day, a 70 kg adult consuming 2 L/day of tap water, and a relative source contribution of 20%.

The RfD included in the proposal was based on a chronic drinking water study in rats conducted by DeAngelo et al. (1997). In the assessment presented for the proposed rule, the LOAEL from this study was identified as 3.5 mg/kg/day based on increased absolute and relative spleen weight in the absence of histopathologic changes. After reviewing comments and further analysis of the data, EPA concludes that it is more appropriate to identify this change as a NOAEL. Increased spleen weights in the absence of histopathological effects are not necessarily adverse. In addition, spleen weights were decreased, rather than increased in the mid- and high-dose groups in the DeAngelo et al. (1997) study and were accompanied by a significant decrease in body weight, decreased relative and absolute liver weights, decreased absolute kidney weight, and an increase in relative testes weight. Accordingly, the mid-dose in this same study (26.1 mg/kg/day) has been categorized as the LOAEL with the lower 3.5 mg/kg/day dose as a NOAEL.

Based on a NOAEL of 3.5 mg/kg/day (DeAngelo et al. 1997), the revised RfD was calculated as shown below, with a composite uncertainty factor of 300. EPA used a default uncertainty factor of 10 to account for extrapolation from an animal study, since no data on rat-to-human differences in toxicokinetics or toxicodynamics were identified. A default uncertainty factor of 10 was used to account for human variability in the absence of data on the variability in the toxicokinetics of MCAA in humans or in human susceptibility to MCAA. An additional uncertainty factor of three was used to account for database insufficiencies. Although there is no multi-generation reproduction study, the available studies of reproductive and developmental processes suggest that developmental toxicity is unlikely to be the most sensitive endpoint. This led to the following calculation of the Reference Dose (RfD) and MCLG for MCAA:

$$\text{RfD} = \frac{(3.5\ \text{mg/kg/day})}{(300)} = 0.012\ \text{mg/kg/day rounded to } 0.01\ \text{mg/kg/day}$$

Where:

3.5 mg/kg/day = NOAEL for decreased body weight plus decreased liver, kidney and spleen weights in rats exposed to MCA for 104 weeks in drinking water (DeAngelo et al. 1997).

300 = composite uncertainty factor chosen to account for inter species extrapolation, inter-individual variability in humans, and deficiencies in the database.

$$\text{MCLG for MCAA} = \frac{(0.01\ \text{mg/kg/day})(70\ \text{kg})(0.2)}{2\ \text{L/day}} = 0.07\ \text{mg/L}$$

The RSC for MCAA was selected using comparable data to that discussed for TCAA. MCAA, like TCAA, has been found in foods and is taken up by foods during cooking (15% in chicken to 62% in pinto beans) and cleaning (2.5% for lettuce) with water containing 500 ppb MCAA (Reimann et al.1996; Raymer et al. 2001, 2004). Rinsing of cooked foods did not increase the MCAA content of foods to the same extent as was observed for TCAA (Raymer et al. 2004). MCAA was found to be completely stable in water boiled for 60 minutes and is likely to be found in the diet due to the use of chlorinated water in food preparation and the use of chlorine as a sanitizing agent by the food industry (USFDA 1994). As with TCAA, inhalation and dermal exposures are unlikely to be significant. Dermal exposure from bathing and showering was estimated to contribute only 0.03% of that from oral exposure (Xu et al. 2002). As with TCAA, due to the limitations in dietary data and a clear indication of exposure from other

sources, EPA applied a relative source contribution of 20%.

c. *Summary of major comments.* EPA received few comments on MCAA and TCAA. The majority of comments about the MCLGs for TCAA and MCAA were general MCLG questions, including RSC derivation. Some commenters questioned why MCAA, TCAA, and chloroform were calculated using an RSC of 20%. In particular, some commenters compared these calculations to that for DBCM in the Stage 1 DBPR, which uses 80%. Each of the MCLGs set for chloroform, TCAA, and MCAA under this rule is calculated using the best available science and EPA Office of Water's current approach for deriving the RSC. EPA chose an RSC of 20%, not 80%, because of clear indications of exposure from other sources; data limitations preclude the derivation of a specific RSC.

The RSC for DBCM was 80% in the Stage 1 DBPR. The DBCM MCLG is not part of today's rulemaking. Any possible future revision to the DBCM MCLG as a result of an RSC change would not affect the MCL for TTHM finalized in today's rule.

In response to comments received on the RfD for MCAA, EPA has reviewed the critical study regarding the appropriateness of an increase in spleen weight in the absence of histopathology as a LOAEL. EPA has determined that the dose associated with this endpoint is more appropriately categorized as a NOAEL rather than a LOAEL and has revised the RfD and MCLG for MCAA.

B. Consecutive Systems

Today's rule includes provisions for consecutive systems, which are public water systems that receive some or all of their finished water from another water system (a wholesale system). Consecutive systems face particular challenges in providing water that meets regulatory standards for DBPs and other contaminants whose concentration can increase in the distribution system. Moreover, previous regulation of DBP levels in consecutive systems varies widely among States. In consideration of these factors, EPA is finalizing monitoring, compliance schedule, and other requirements specifically for consecutive systems. These requirements are intended to facilitate compliance by consecutive systems with MCLs for TTHM and HAA5 under the Stage 2 DBPR and help to ensure that consumers in consecutive systems receive equivalent public health protection.

1. Today's Rule

As public water systems, consecutive systems must provide water that meets the MCLs for TTHM and HAA5 under the Stage 2 DBPR, use specified analytical methods, and carry out associated monitoring, reporting, recordkeeping, public notification, and other requirements. The following discusses a series of definitions needed for addressing consecutive system requirements in today's rule. Later sections of this preamble provide further details on how rule requirements (e.g., schedule and monitoring) apply to consecutive systems.

A consecutive system is a public water system that receives some or all of its finished water from one or more wholesale systems.

Finished water is water that has been introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

A wholesale system is a public water system that treats source water as necessary to produce finished water and then delivers finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

The combined distribution system is defined as the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water from those wholesale system(s).

EPA is allowing States some flexibility in defining what systems are a part of a combined distribution system. This provision determines effective dates for requirements in today's rule; see Section IV.E (Compliance Schedules) for further discussion. EPA has consulted with States and deferred to their expertise regarding the nature of the connection in making combined distribution system determinations. In the absence of input from the State, EPA will determine that combined distribution systems include all interconnected systems for the purpose of determining compliance schedules for implementation of this rule.

2. Background and Analysis

The practice of public water systems buying and selling water to each other has been commonplace for many years. Reasons include saving money on pumping, treatment, equipment, and personnel; assuring an adequate supply during peak demand periods; acquiring emergency supplies; selling surplus supplies; and delivering a better product to consumers. EPA estimates that there are more than 10,000 consecutive systems nationally.

Consecutive systems face particular challenges in providing water that meets regulatory standards for contaminants that can increase in the distribution system. Examples of such contaminants include coliforms, which can grow if favorable conditions exist, and some DBPs, including THMs and HAAs, which can increase when a disinfectant and DBP precursors continue to react in the distribution system.

EPA included requirements specifically for consecutive systems because States have taken widely varying approaches to regulating DBPs in consecutive systems in previous rules. For example, some States have not regulated DBP levels in consecutive systems that deliver disinfected water but do not add a disinfectant. Other States have determined compliance with DBP standards based on the combined distribution system that includes both the wholesaler and consecutive systems. In this case, sites in consecutive systems are treated as monitoring sites within the combined distribution system. Neither of these approaches provide the same level of public health protection as non-consecutive systems receive under the Stage 1 DBPR. Once fully implemented, today's rule will ensure similar protection for consumers in consecutive systems.

In developing its recommendations, the Stage 2 M-DBP Advisory Committee recognized two principles related to consecutive systems: (1) consumers in consecutive systems should be just as well protected as customers of all systems, and (2) monitoring provisions should be tailored to meet the first principle. Accordingly, the Advisory Committee recommended that all wholesale and consecutive systems comply with provisions of the Stage 2 DBPR on the same schedule required of the wholesale or consecutive system serving the largest population in the combined distribution system. In addition, the Advisory Committee recommended that EPA solicit comments on issues related to consecutive systems that the Advisory Committee had not fully explored (USEPA 2000a). EPA agreed with these recommendations and they are reflected in today's rule.

3. Summary of Major Comments

Commenters generally supported the proposed definitions. However, commenters did express some concerns, especially with including a time period of water delivery that defined whether a system was a consecutive system (proposed to trigger plant-based monitoring requirements) or wholesale system (proposed to allow determination that a combined distribution system existed). EPA has dropped this requirement from the final rule; population-based monitoring requirements in the final rule do not need to define how long a plant must operate in order to be considered a plant, and EPA has provided some flexibility for States to determine which systems comprise a combined distribution system (without presenting a time criterion).

Other commenters expressed concern that the proposed definition of consecutive system was inconsistent with use of the term prior to the rulemaking. EPA acknowledges that the Agency has not previously formally defined the term, but believes that the definition in today's rule best considers all commenters' concerns, while also providing for accountability and public health protection in as simple a manner as is possible given the many consecutive system scenarios that currently exist.

Several States requested flexibility to determine which systems comprised a combined distribution system under this rule; EPA has included that flexibility for situations in which systems have only a marginal association (such as an infrequently used emergency connection) with other systems in the combined distribution system. To prepare for the IDSE and subsequent Stage 2 implementation, EPA has worked with States in identifying all systems that are part of each combined distribution system.

Finally, several commenters requested that the wholesale system definition replace "public water system" with "water system" so that wholesale systems serving fewer than 25 people would not be considered public water systems. EPA did not change the definition in today's rule; EPA considers any water system to be a public water system (PWS) if it serves 25 or more people either directly (retail) or indirectly (by providing finished water to a consecutive system) or through a combination of retail and consecutive system customers. If a PWS receives water from an unregulated entity, that PWS must meet all compliance requirements (including monitoring and treatment techniques) that any other public water system that uses source water of unknown quality must meet.

C. LRAA MCLs for TTHM and HAA5

1. Today's Rule

This rule requires the use of locational running annual averages (LRAAs) to determine compliance with the Stage 2 MCLs of 0.080 mg/L TTHM and 0.060 mg/L HAA5. All systems, including consecutive systems, must comply with the MCLs for TTHM and HAA5 using sampling sites identified under the Initial Distribution System Evaluation (IDSE) or using existing Stage 1 DBPR compliance monitoring locations (as discussed in Section IV.F). EPA has dropped the proposed phased approach for LRAA implementation (Stage 2A and Stage 2B) by removing Stage 2A and redesignating Stage 2B as Stage 2.

Details of monitoring requirements and compliance schedules are discussed in preamble Sections IV.G and IV.E, respectively, and may be found in subpart V of today's rule.

2. Background and Analysis

The MCLs for TTHM and HAA5 are the same as those proposed, 0.080 mg/L TTHM and 0.060 mg/L HAA5 as an LRAA. See the proposed rule (68 FR 49584, August 18, 2003) (USEPA 2003a) for a more detailed discussion of the analysis supporting the MCLs. The primary objective of the LRAA is to reduce exposure to high DBP levels. For an LRAA, an annual average must be computed at each monitoring location. The RAA compliance basis of the 1979 TTHM rule and the Stage 1 DBPR allows a system-wide annual average under which high DBP concentrations in one or more locations are averaged with, and dampened by, lower concentrations elsewhere in the distribution system. Figure IV.C–1 illustrates the difference in calculating compliance with the MCLs for TTHM between a Stage 1 DBPR RAA, and the Stage 2 DBPR LRAA.

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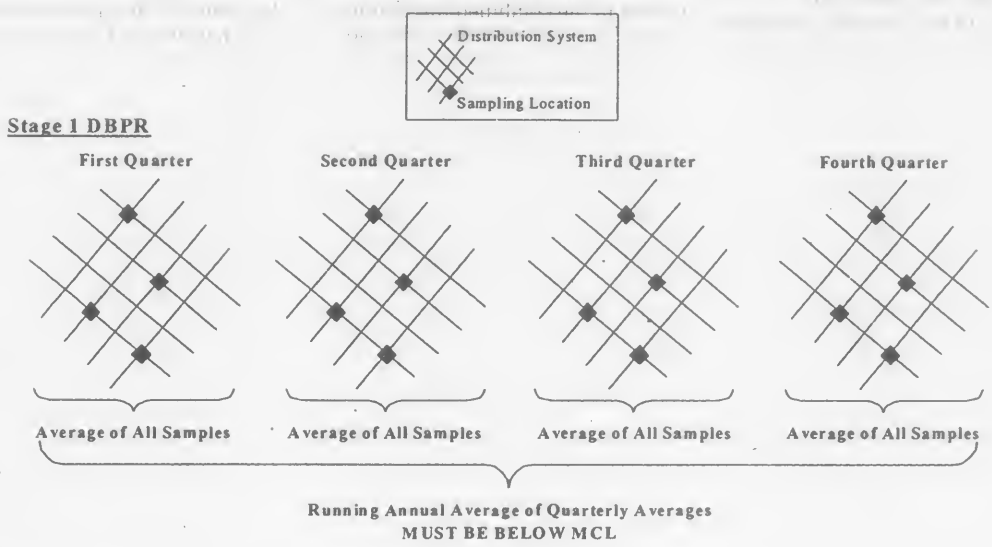
Figure IV.C-1. Comparison of RAA and LRAA compliance calculations[1].



[1]Stage 2 DBPR sampling locations will be selected based on the results of an IDSE and may occur at locations different from Stage 1 DBPR sampling sites.

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EPA and the Stage 2 M–DBP Advisory Committee considered an array of alternative MCL strategies. The Advisory Committee discussions primarily focused on the relative magnitude of exposure reduction versus the expected impact on the water industry and its customers. Strategies considered included across the board requirements, such as significantly decreasing the MCLs (e.g., 40/30) or single hit MCLs (e.g., all samples must be below 80/60); and risk targeting requirements. In the process of evaluating alternatives, EPA and the Advisory Committee reviewed vast quantities of data and many analyses that addressed health effects, DBP occurrence, predicted reductions in DBP levels, predicted technology changes,

and capital, annual, and household costs. The Advisory Committee recommended and EPA proposed the risk targeting approach of 80/60 as an LRAA preceded by an IDSE. Today's rule finalizes these requirements.

EPA has chosen compliance based on an LRAA due to concerns about levels of DBPs above the MCL in some portions of the distribution system. The LRAA standard will eliminate system-wide averaging of monitoring results from different monitoring locations. The individuals served in areas of the distribution system with above average DBP occurrence levels masked by averaging under an RAA are not receiving the same level of health protection. Although an LRAA standard still allows averaging at a single location over an annual period, EPA concluded that changing the basis of compliance from an RAA to an LRAA will result in decreased exposure to higher DBP levels (see Section VI for predictions of DBP reductions under the LRAA MCLs). This conclusion is based on three considerations:

(1) There is considerable evidence that under the current RAA MCL compliance monitoring requirements, a small but significant proportion of monitoring locations experience high DBP levels at least some of the time. Of systems that collected data under the Information Collection Rule that met the Stage 1 DBPR RAA MCLs, 14 percent had TTHM single sample concentrations greater than the Stage 1 MCL, and 21 percent had HAA5 single sample concentrations above the MCL. Although most TTHM and HAA5 samples were below 100 µg/L, some ranged up to 140 µg/L and 130 µg/L, respectively.

(2) In some situations, the populations served by certain portions of the distribution system consistently receive water that exceeds 0.080 mg/L for TTHM or 0.060 mg/L for HAA5 (both as LRAAs) even though the system is in compliance with Stage 1 MCLs). Of Information Collection Rule systems meeting the Stage 1 DBPR MCLs as RAAs, five percent had monitoring locations that exceeded 0.080 mg/L TTHM and three percent exceeded 0.060 mg/L HAA5 as an annual average (i.e., as LRAAs) by up to 25% (calculated as indicated in Figure IV.C–1). Customers served at these locations consistently received water with TTHM and/or HAA5 concentrations higher than the system-wide average and higher than the MCL.

(3) Compliance based on an LRAA will remove the opportunity for systems to average out samples from high and low quality water sources. Some systems are able to comply with an RAA MCL even if they have a plant with a poor quality water source (that thus produces high concentrations of DBPs) because they have another plant that has a better quality water source (and thus lower concentrations of DBPs). Individuals served by the plant with the poor quality source will usually have higher DBP exposure than individuals served by the other plant.

In part, both the TTHM and HAA5 classes are regulated because they occur at high levels and represent chlorination byproducts that are produced from source waters with a wide range of water quality. The combination of TTHM and HAA5 represent a wide variety of compounds resulting from bromine substitution and chlorine substitution reactions (e.g., bromoform has three bromines, TCAA has three chlorines, BDCM has one bromine and two chlorines). EPA believes that the TTHM and HAA5 classes serve as an indicator for unidentified and unregulated DBPs. EPA believes that controlling the occurrence levels of TTHM and HAA5 will help control the overall levels of chlorination DBPs.

3. Summary of Major Comments

Commenters supported the proposed, risk-targeted MCL strategy over the alternative MCL strategies that were considered by the Advisory Committee as the preferred regulatory strategy. Commenters concurred with EPA's analysis that such an approach will reduce peak and average DBP levels. Commenters supported the Stage 2 long-term MCLs of 0.080 mg/L TTHM and 0.060 mg/L HAA5 as LRAAs.

EPA received many comments on today's MCLs specific to consecutive systems. While commenters supported consecutive system compliance with the Stage 2 DBPR in order to provide comparable levels of public health protection, they noted that it would be difficult for many consecutive systems to meet Stage 2 requirements because they have not had to meet the full scope of DBP requirements under previous rules. EPA has developed a training and outreach program to assist these systems and encourages States, wholesale systems, and professional associations to also provide assistance.

Some commenters expressed concern about holding consecutive systems responsible for water quality over which they have no control. Several commenters were concerned about the establishment of contracts between wholesale and consecutive systems, including concern about a strain on their relationship, wholesale system reluctance to commit to keep DBPs at a level suggested by the consecutive systems, and the time and money it could take to work out differences. Although setting up a contract is a prudent business action, commenters noted that small consecutive water systems have few resources to sue for damages should the wholesaler provide water exceeding the MCL.

The purpose of DBPRs is to protect public health from exposure to high DBP levels. Not requiring violations when distributed water exceeds MCLs undermines the intent of the rule. While EPA recognizes consecutive systems do not have full control over the water they receive, agreements between wholesale and consecutive systems may specify water quality and actions required of the wholesaler if those water quality standards are not met.

Finally, commenters recommended that the Stage 2A provisions in the proposed rule be removed. These provisions (compliance with locational running annual average MCLs of 0.120 mg/L for TTHM and 0.100 mg/L for HAA5) required systems to comply with the Stage 1 MCLs (as running annual averages) and the Stage 2A MCLs (as LRAAs) concurrently until systems were required to comply with Stage 2B MCLs. Commenters noted that having two separate MCLs for an individual system to comply with at the same time was confusing to the system and its customers. In addition, State resources needed for compliance determinations and data management for this short-term requirement would be resource-intensive. Finally, resources spent to comply with Stage 2A would be better spent in complying with Stage 2B, especially given that some of the changes for Stage 2A compliance might not provide any benefit for Stage 2B. Since EPA agrees with commenters' concerns, the Stage 2A requirements have been removed from the final rule.

D. BAT for TTHM and HAA5

1. Today's Rule

Today, EPA is identifying the best available technology (BAT) for the TTHM and HAA5 LRAA MCLs (0.080 mg/L and 0.060 mg/L respectively) for systems that treat their own source water as one of the three following technologies:

(1) GAC10 (granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 120 days)

(2) GAC20 (granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average

daily flow and a carbon reactivation frequency of every 240 days)

(3) Nanofiltration (NF) using a membrane with a molecular weight cutoff of 1000 Daltons or less.

EPA is specifying a different BAT for consecutive systems than for systems that treat their own source water to meet the TTHM and HAA5 LRAA MCLs. The consecutive system BAT is chloramination with management of hydraulic flow and storage to minimize residence time in the distribution system for systems that serve at least 10,000 people and management of hydraulic flow and storage to minimize residence time in the distribution system for systems that serve fewer than 10,000 people.

2. Background and Analysis

The BATs are the same as was proposed, except that consecutive systems serving fewer than 10,000 people do not have chloramination as part of the consecutive system BAT. See the proposal (68 FR 49588, August 18, 2003) (USEPA 2003a) for more detail on the analysis supporting these requirements. The Safe Drinking Water Act directs EPA to specify BAT for use in achieving compliance with the MCL. Systems unable to meet the MCL after application of BAT can get a variance (see Section IV.K for a discussion of variances). Systems are not required to use BAT in order to comply with the MCL. PWSs may use any State-approved technologies as long as they meet all drinking water standards.

EPA examined BAT options first by analyzing data from the Information Collection Rule treatment studies designed to evaluate the ability of GAC and NF to remove DBP precursors. Based on the treatment study results, GAC is effective for controlling DBP formation for waters with influent TOC concentrations below approximately 6 mg/L (based on the Information Collection Rule and NRWA data, over 90 percent of plants have average influent TOC levels below 6 mg/L (USEPA 2003c)). Of the plants that conducted an Information Collection Rule GAC treatment study, approximately 70 percent of the surface water plants studied could meet the 0.080 mg/L TTHM and 0.060 mg/L HAA5 MCLs, with a 20 percent safety factor (i.e., 0.064 mg/L and 0.048 mg/L, respectively) using GAC with 10 minutes of empty bed contact time and a 120 day reactivation frequency, and 78 percent of the plants could meet the MCLs with a 20 percent safety factor using GAC with 20 minutes of empty bed contact time and a 240 day reactivation frequency. Because the treatment studies were conducted at plants with much poorer water quality than the national average, EPA believes that much higher percentages of plants nationwide could meet the MCLs with the proposed GAC BATs.

Among plants using GAC, larger systems would likely realize an economic benefit from on-site reactivation, which could allow them to use smaller, 10-minute empty bed contact time contactors with more frequent reactivation (*i.e.*, 120 days or less). Most small systems would not find it economically advantageous to install on-site carbon reactivation facilities, and thus would opt for larger, 20-minute empty bed contact time contactors, with less frequent carbon replacement (*i.e.*, 240 days or less).

The Information Collection Rule treatment study results also demonstrated that nanofiltration was the better DBP control technology for ground water sources with high TOC concentrations (i.e., above approximately 6 mg/L). The results of the membrane treatment studies showed that all ground water plants could meet the 0.080 mg/L TTHM and 0.060 mg/L HAA5 MCLs, with a 20% safety factor (i.e., 0.064 mg/L and 0.048 mg/L, respectively) at the system average distribution system residence time using nanofiltration. Nanofiltration would be less expensive than GAC for high TOC ground waters, which generally require minimal pretreatment prior to the membrane process. Also, nanofiltration is an accepted technology for treatment of high TOC ground waters in Florida and parts of the Southwest, areas of the country with elevated TOC levels in ground waters.

The second method that EPA used to examine alternatives for BAT was the Surface Water Analytical Tool model that was developed to compare alternative regulatory strategies as part of the Stage 1 and Stage 2 M–DBP Advisory Committee deliberations. EPA modeled a number of BAT options. In the model, GAC10 was defined as granular activated carbon with an empty bed contact time of 10 minutes and a reactivation or replacement interval of 90 days or longer. GAC20 was defined as granular activated carbon with an empty bed contact time of 20 minutes and a reactivation or replacement interval of 90 days or longer.

The compliance percentages forecasted by the SWAT model are indicated in Table IV.D–1. EPA estimates that more than 97 percent of large systems will be able to achieve the Stage 2 MCLs with the GAC BAT, regardless of post-disinfection choice (Seidel Memo, 2001). Because the source water quality (e.g., DBP precursor levels) in medium and small systems is expected to be comparable to or better than that for the large system (USEPA 2005f), EPA believes it is conservative to assume that at least 90 percent of medium and small systems will be able to achieve the Stage 2 MCLs if they were to apply one of the proposed GAC BATs. EPA assumes that small systems may adopt GAC20 in a replacement mode (with replacement every 240 days) over GAC10 because it may not be economically feasible for some small systems to install and operate an on-site GAC reactivation facility. Moreover, some small systems may find nanofiltration cheaper than the GAC20 in a replacement mode if their specific geographic locations cause a relatively high cost for routine GAC shipment.

TABLE IV.D–1.—SWAT MODEL PREDICTIONS OF PERCENT OF LARGE PLANTS IN COMPLIANCE WITH TTHM AND HAA5 STAGE 2 MCLS AFTER APPLICATION OF SPECIFIED TREATMENT TECHNOLOGIES

Technology	Compliance with 0.080 mg/L TTHM and 0.060 mg/L HAA5 LRAAs			Compliance with 0.064 mg/L TTHM and 0.048 mg/L HAA5 LRAAs (MCLs with 20% Safety factor)		
	Residual disinfectant		All systems (percent)	Residual disinfectant		All systems (percent)
	Chlorine (percent)	Chloramine (percent)		Chlorine (percent)	Chloramine (percent)	
Enhanced Coagulation (EC)	73.5	76.9	74.8	57.2	65.4	60.4
EC (no pre-disinfection)	73.4	88.0	78.4	44.1	62.7	50.5
EC & GAC10	100	97.1	99.1	100	95.7	98.6

TABLE IV.D–1.—SWAT MODEL PREDICTIONS OF PERCENT OF LARGE PLANTS IN COMPLIANCE WITH TTHM AND HAA5 STAGE 2 MCLS AFTER APPLICATION OF SPECIFIED TREATMENT TECHNOLOGIES—Continued

Technology	Compliance with 0.080 mg/L TTHM and 0.060 mg/L HAA5 LRAAs			Compliance with 0.064 mg/L TTHM and 0.048 mg/L HAA5 LRAAs (MCLs with 20% Safety factor)		
	Residual disinfectant		All systems (percent)	Residual disinfectant		All systems (percent)
	Chlorine (percent)	Chloramine (percent)		Chlorine (percent)	Chloramine (percent)	
EC & GAC20	100	100	100	100	100	100
EC & All Chloramines	NA	83.9	NA	NA	73.6	NA

Note: Enhanced coagulation/softening is required under the Stage 1 DBPR for conventional plants.
Source: Seidel (2001).

The BAT requirements for large consecutive systems are the same as proposed, but the requirements have changed for small consecutive systems. EPA believes that the best compliance strategy for consecutive systems is to collaborate with wholesalers on the water quality they need. For consecutive systems that are having difficulty meeting the MCLs, EPA is specifying a BAT of chloramination with management of hydraulic flow and storage to minimize residence time in the distribution system for systems serving at least 10,000 and management of hydraulic flow and storage to minimize residence time in the distribution system for systems serving fewer than 10,000. EPA believes that small consecutive systems can use this BAT to comply with the Stage 2 DBPR, but if they cannot, then they can apply to the State for a variance.

Chloramination has been used for residual disinfection for many years to minimize the formation of chlorination DBPs, including TTHM and HAA5 (USEPA 2003d). EPA estimates that over 50 percent of large subpart H systems serving at least 10,000 use chloramination for Stage 1. The BAT provision to manage hydraulic flow and minimize residence time in the distribution system is to facilitate the maintenance of the chloramine residual and minimize the likelihood for nitrification. EPA has not included chloramination for consecutive systems as part of the BAT for systems serving fewer than 10,000 due to concerns about their ability to properly control the process, given that many have no treatment capability or expertise and the Agency's concern about such systems having operational difficulties such as distribution system nitrification.

EPA believes that the BATs for nonconsecutive systems are not appropriate for consecutive systems because their efficacy in controlling DBPs is based on precursor removal. Consecutive systems face the unique challenge of receiving waters in which DBPs are already present if the wholesale system has used a residual disinfectant, which the BATs for nonconsecutive systems do not effectively remove. GAC is not cost-effective for removing DBPs. Nanofiltration is only moderately effective at removing THMs or HAAs if membranes with a very low molecular weight cutoff (and very high cost of operation are employed). Therefore, GAC and nanofiltration are not appropriate BATs for consecutive systems.

3. Summary of Major Comments

Commenters concurred with EPA's identification of BATs for nonconsecutive systems but expressed concern about the BAT for consecutive systems. Many commenters agreed that Stage 2 compliance for consecutive systems would usually best be achieved by improved treatment by the wholesale system. However, they noted that the proposed BAT may not be practical for compliance if water delivered to the consecutive system is at or near DBP MCLs. In addition, chloramination requires operator supervision and adjustment and many consecutive systems that buy water may be reluctant to operate chemical feed systems. Therefore, EPA included chloramines as part of the BAT in today's rule only for systems serving at least 10,000 because of the operator attention it requires and concerns with safety and nitrification. While some commenters believed that having a BAT for consecutive systems contradicts the premise of the Stage 1 DBPR that DBPs are best controlled through TOC removal and optimizing disinfection processes, the SDWA requires EPA to identify a BAT for all systems required to meet an MCL. No commenter recommended an alternative BAT. EPA still believes that precursor removal remains a highly effective strategy to reduce DBPs. Thus, EPA encourages States to work with wholesale systems and consecutive systems to identify strategies to ensure compliance, especially those systems with DBP levels close to the MCL.

E. Compliance Schedules

1. Today's Rule

This section specifies compliance dates for the IDSE and MCL compliance requirements in today's rule. As described elsewhere in Section IV of this preamble, today's rule requires PWSs to carry out the following activities:

- Conduct initial distribution system evaluations (IDSEs) on a required schedule. Systems may comply by using any of four approaches for which they qualify (standard monitoring, system specific study, 40/30 certification, or very small system waiver).
- Determine Stage 2 monitoring locations based on the IDSE.
- Comply with Stage 2 MCLs on a required schedule.

Compliance dates for these activities vary by PWS size. Table IV.E–1 and Figure IV.E–1 specify IDSE and Stage 2 compliance dates. Consecutive systems of any size must comply with the requirements of the Stage 2 DBPR on the same schedule as required for the largest system in the combined distribution system.

TABLE IV.E–1.—IDSE AND STAGE 2 COMPLIANCE DATES

Requirement	Compliance dates by PWS size (retail population served) [1]				
	CWSs and NTNCWSs serving at least 100,000	CWSs and NTNCWSs serving 50,000–99,999	CWSs and NTNCWSs serving 10,000–49,999	CWSs serving <10,000	NTNCWSs serving <10,000
Submit IDSE monitoring plan OR Submit IDSE system specific study plan OR. Submit 40/30 certification OR ..... Receive very small system waiver from State.	October 1, 2006	April 1, 2007	October 1, 2007	April 1, 2008	Not applicable.
Complete standard monitoring or system specific study.	September 30, 2008	March 31, 2009	September 30, 2009	March 31, 2010 ..	Not applicable.
Submit IDSE Report	January 1, 2009	July 1, 2009	January 1, 2010	July 1, 2010	Not applicable.
Begin subpart V (Stage 2) compliance monitoring [2].	April 1, 2012	October 1, 2012	October 1, 2013	October 1, 2013 (October 1, 2014 if Cryptosporidium monitoring is required under Subpart W)..	

[1] Wholesale and consecutive systems that are part of a combined distribution system must comply based on the schedule required of the largest system in the combined distribution system.

[2] States may grant up to an additional 2 years for systems making capital improvements.

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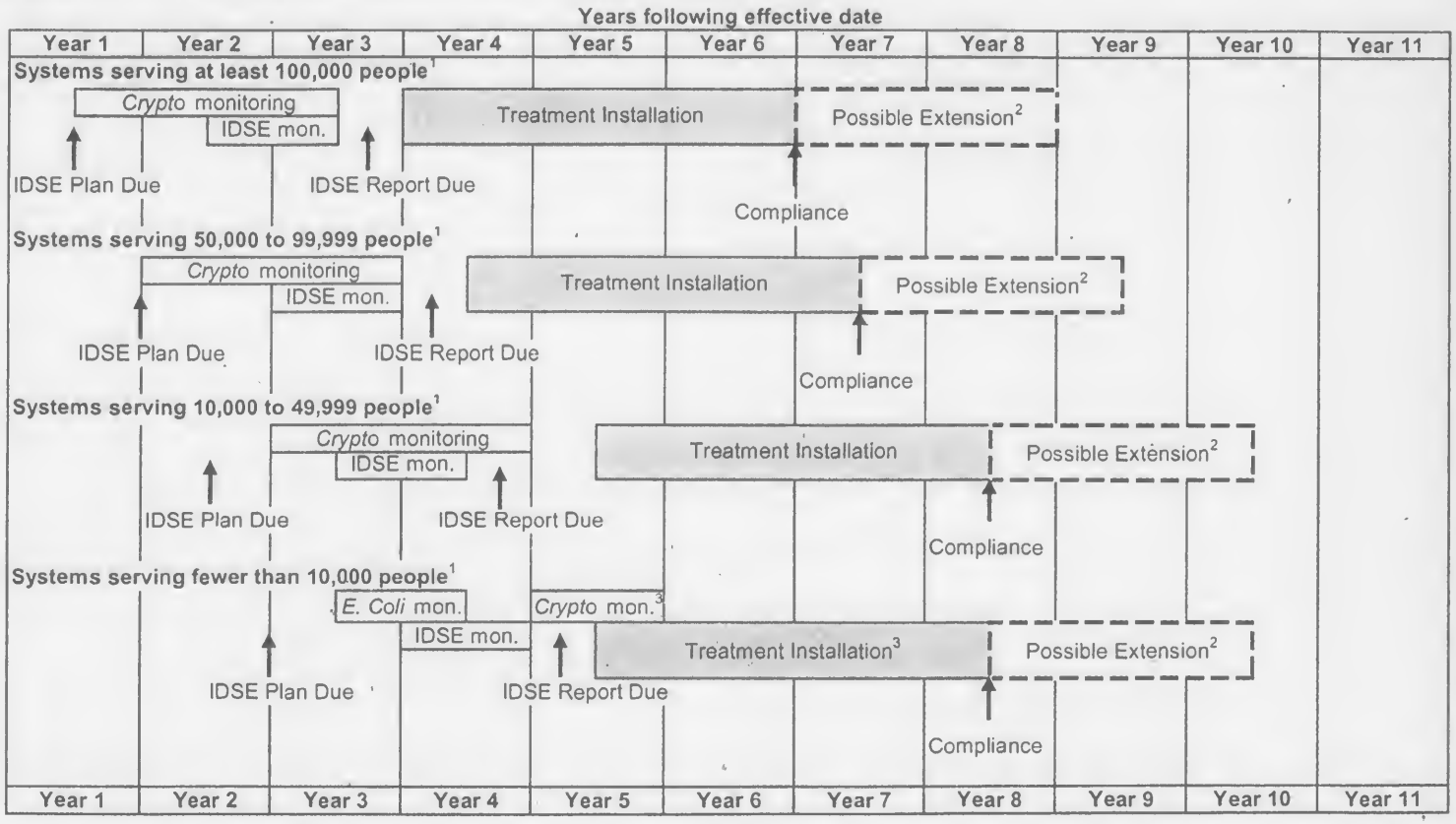
Figure IV.E-1. Final Stage 2 DBPR and LT2ESWTR Implementation Schedule.



[1] Includes all systems that are part of a combined distribution system that has a largest system with this population.

[2] A State may grant up to a two year extension for systems to comply if the State determines that additional time is necessary for capital improvements needed for compliance.

[3] Subpart H systems serving fewer than 10,000 that must conduct *Crypto* monitoring have an additional 12 months to comply with Stage 2 DBPR MCLs.

2. Background and Analysis

The compliance schedule in today's final rule stems from the risk-targeted approach of the rule, wherein PWSs conduct initial monitoring to determine locations and concentrations of high DBPs. A primary objective of this schedule is to ensure that PWSs identify locations with high DBP concentrations and provide appropriate additional treatment in a timely manner for high risk areas, while not requiring low risk systems to add additional treatment. The compliance schedule balances the objective of early risk-targeted monitoring with adequate time for PWSs and the State or primacy agency to assure full implementation and compliance. EPA is establishing concurrent compliance schedules under the Stage 2 DBPR for all systems (both wholesale systems and consecutive systems) in a particular combined distribution system because this will assure comparable risk-based targeting information being available at the same time for all PWSs that are part of a combined distribution system and thereby allow for more cost-effective compliance with TTHM and HAA5 MCLs.

SDWA section 1412(b)(10) states that a drinking water regulation shall take effect 3 years from the promulgation date unless the Administrator determines that an earlier date is practicable. Today's rule requires PWSs to begin monitoring prior to 3 years from the promulgation date. Based on EPA's assessment and recommendations of the Advisory Committee, as described in this section, EPA has determined that these monitoring start dates are practicable and appropriate.

Systems must submit their IDSE plans (monitoring plans for standard monitoring, study plans for system specific studies) to the primacy agency for review and approval. The State or primacy agency will then have 12 months to review, and, as necessary, consult with the system. A number of PWSs will then conduct one year of distribution system monitoring for TTHM and HAA5 at locations other than those currently used for Stage 1 DBPR compliance monitoring. At the conclusion of this monitoring, these PWSs have three months to evaluate analysis and monitoring results and submit Stage 2 compliance monitoring locations and schedules to the State or primacy agency. Where required, PWSs must provide the necessary level of treatment to comply with the Stage 2 MCLs within three years of the completion of State or primacy agency review of the IDSE report, though States may allow an additional two years for PWSs making capital improvements.

EPA has modified the proposed compliance schedule to stagger monitoring start dates for PWSs serving 10,000 to 99,999 people and to allow more time for development and review of IDSE monitoring plans prior to the start of monitoring. The following discussion addresses these changes from the proposal.

The proposed rule required all PWSs serving at least 10,000 people (plus smaller systems that are part of a combined distribution system with a PWS that serves at least 10,000 people) to complete IDSE monitoring and submit IDSE reports (including recommended Stage 2 compliance monitoring locations) two years after rule promulgation, followed by one year for review of IDSE reports, after which systems had three years to come into compliance with Stage 2B MCLs.

Under today's final rule, PWSs serving at least 100,000 people (plus smaller systems that are part of the combined distribution system) will meet the same Stage 2 compliance deadlines as proposed. However, the timing of the IDSE has been changed to allow for a more even workload and a greater opportunity for primacy agency involvement (*e.g.*, through monitoring plan review and approval). The IDSE plan submission dates for PWSs serving 50,000 to 99,999 people (plus smaller systems that are part of the combined distribution system) will be 12 months after the effective date; for PWSs serving 10,000 to 49,999 (plus smaller systems that are part of the combined distribution system), the IDSE plan submission dates will be 18 months after the effective date. The Stage 2 compliance schedule for systems serving fewer than 10,000 people remains the same as proposed. Stage 2 MCL compliance dates are modified accordingly.

This staggering of IDSE start dates for PWSs serving 10,000 to 99,999 people is advantageous in several respects:

- Provides PWSs greater assurance that IDSEs are properly conducted by requiring IDSE plan review prior to conducting the IDSE.
- Provides additional time to develop budgets and establish contracts with laboratories.
- Spreads out the workload for technical assistance and guidance. The staggered schedule will allow States and EPA to provide more support to individual PWSs as needed.
- Provides time for DBP analytical laboratories to build capacity as needed to accommodate the sample analysis needs of PWSs and extends and smooths the demand for laboratory services.
- Maintains simultaneous rule compliance with the LT2ESWTR as recommended by the Stage 2 M-DBP Advisory Committee and as mandated by the 1996 SDWA Amendments, which require that EPA "minimize the overall risk of adverse health effects by balancing the risk from the contaminant and the risk from other contaminants the concentrations of which may be affected by the use of a treatment technique or process that would be employed to attain the maximum contaminant level" (Sec. 1412(b)(5)(B)(i)).

The Advisory Committee recommended the Initial Distribution System Evaluation, as discussed in Section IV.F, and EPA is finalizing an IDSE schedule generally consistent with the Advisory Committee timeframe recommendation, but modified to stagger the schedule for systems serving more than 10,000 but less than 100,000, and to address public comments on the IDSE requirements.

For all systems, the IDSE schedule has been revised to allow systems to submit and States or primacy agencies to review (and revise, if necessary) systems' recommendations for IDSE and Stage 2 monitoring locations, while still allowing systems three years after completion of the State or primacy agency review of Stage 2 compliance monitoring locations to make necessary treatment and operational changes to comply with Stage 2 MCLs.

Figure IV.E–2 illustrates compliance schedules for examples of three combined distribution systems, with the schedule dictated by the retail population served by the largest system.

FIGURE IV.E–2.—SCHEDULE EXAMPLES.

—Wholesale system (pop. 64,000) with three consecutive systems (pops. 21,000; 15,000; 5,000):
  —IDSE monitoring plan due for all systems April 1, 2007 since wholesale system serves 50,000–99,999
  —Stage 2 compliance beginning October 1, 2012 for all systems
—Wholesale system (pop. 4,000) with three consecutive systems (pops. 21,000; 5,000; 5,000):

FIGURE IV.E–2.—SCHEDULE EXAMPLES.—Continued

—IDSE monitoring plan due for all systems October 1, 2007 since the largest system in combined distribution system serves 10,000–49,999
—Stage 2 compliance beginning October 1, 2013 for all systems
—Wholesale system (pop. 4,000) with three consecutive systems (pops. 8,000; 5,000; 5,000):
—IDSE monitoring plan due for all systems April 1, 2008 since no individual system in combined distribution system exceeds 10,000 (even though total population exceeds 10,000)
—Stage 2 compliance beginning October 1, 2013 if no Cryptosporidium monitoring under the LT2ESWTR is required or beginning October 1, 2014 if Cryptosporidium monitoring under the LT2ESWTR is required

This schedule requires wholesale systems and consecutive systems that are part of a combined distribution system with at least one system with an earlier compliance deadline to conduct their IDSE simultaneously so that the wholesale system will be aware of compliance challenges facing the consecutive systems and will be able to implement treatment plant, capital, and operational improvements as necessary to ensure compliance of both the wholesale and consecutive systems. The Advisory Committee and EPA both recognized that DBPs, once formed, are difficult to remove and are generally best addressed by treatment plant improvements, typically through precursor removal or use of alternative disinfectants. For a wholesale system to make the best decisions concerning the treatment steps necessary to meet TTHM and HAA5 LRAAs under the Stage 2 DBPR, both in its own distribution system and in the distribution systems of consecutive systems it serves, the wholesale system must know the DBP levels throughout the combined distribution system. Without this information, the wholesale system may design treatment changes that allow the wholesale system to achieve compliance, but leave the consecutive system out of compliance.

In summary, the compliance schedule for today's rule maintains the earliest compliance dates recommended by the Advisory Committee for PWSs serving at least 100,000 people (plus smaller systems that are part of the combined distribution system). These PWSs serve the majority of people. The schedule also maintains the latest compliance dates the Advisory Committee recommended, which apply to PWSs serving fewer than 10,000 people. EPA has staggered compliance schedules for PWSs between these two size categories in order to facilitate implementation of the rule. This staggered schedule is consistent with the schedule required under the LT2ESWTR promulgated elsewhere in today's **Federal Register**.

3. Summary of Major Comments

EPA received significant public comment on the compliance schedule in the August 18, 2003 proposal. Major issues raised by commenters include providing more time for PWSs to prepare for monitoring, giving States or primacy agencies more time to oversee monitoring, and establishing consistent schedules for consecutive PWSs. A summary of these comments and EPA's responses follows.

Standard monitoring plan and system specific study plan preparation. Many commenters were concerned about the proposed requirement to develop and execute an IDSE monitoring plan without any primacy agency review. PWSs specifically expressed concern about the financial commitment without prior State approval and noted that some PWSs would need more than the time allowed under the proposed rule to develop and implement an IDSE monitoring plan, especially without an opportunity for State or primacy agency review and approval. Smaller PWSs may require substantial time and planning to budget for IDSE expenses, especially for systems that have not previously complied with DBP MCLs.

EPA recognizes these concerns and today's final rule provides time for PWSs to submit IDSE plans (monitoring plans, study plans, or 40/30 certifications) for State or primacy agency review and more time before having to begin monitoring. Specifically, PWSs serving 50,000 to 99,999 people and those serving 10,000 to 49,999 people must submit IDSE plans about 12 months and 18 months after the effective date, respectively, and complete standard monitoring or a system specific study within two years after submitting their IDSE plan. This is significantly more time than was specified under the proposal, where these systems would have had to conduct their IDSE and submit their IDSE report 24 months after the effective date. PWSs serving at least 100,000 people must submit IDSE plans about six months after the effective date and complete standard monitoring or a system specific study about 30 months after the effective date, which also provides more time than was specified under the proposal. PWSs serving fewer than 10,000 people, not associated with a larger system in their combined distribution system, do not begin monitoring until more than 36 months after the effective date.

EPA believes that the final compliance schedule allows PWSs sufficient time to develop IDSE plans with these compliance dates. The schedule also allows 12 months for State or primacy agency review of IDSE plans, which allows additional time for review and for coordination with systems and provides more time to address deficiencies in IDSE plans. This is especially important for smaller PWSs, which are likely to need the most assistance from States. By staggering monitoring start dates, today's rule also eases implementation by reducing the number of PWSs that will submit plans at any one time, when the most assistance from regulatory agencies will be required.

In summary, today's schedule has been modified so that systems are required to submit IDSE plans for primacy agency review and approval prior to conducting their IDSE. Systems can consider that their plan has been approved if they have not heard back from the State by the end of the State review period. Systems are also required to conduct the approved monitoring and submit their IDSE report (including the system's recommended Stage 2 compliance monitoring) for State or primacy agency review on a schedule that allows for systems to still have a minimum of full three years to comply with Stage 2 following State or primacy agency review of the system's Stage 2 recommended monitoring. As with the review of plans, systems can consider that their IDSE report has been approved if they have not heard back from the State by the end of the State review period.

State/primacy agency oversight. EPA is preparing to support implementation of IDSE requirements that must be completed prior to States achieving primacy. Several States have expressed concern about EPA providing guidance and reviewing reports from systems that the State has permitted, inspected, and worked with for a long time. These States believe that their familiarity with

the systems enables them to make the best decisions to implement the rule and protect public health and that the rule requirement should be delayed until States receive primacy. Commenters were concerned that some States will not participate in early implementation activities and indicated that States would prefer monitoring to begin 24 months after rule promulgation. Commenters also noted that States need sufficient time to become familiar with the rule, train their staff, prepare primacy packages, and train PWSs.

EPA agrees that State familiarity is an important component of the review and approval process, looks forward to working closely with the State drinking water program representatives during IDSE implementation, and welcomes proactive State involvement. However, the Agency believes that delaying implementation of risk-based IDSE targeting activities until States receive primacy is an unacceptable delay in public health protection and also inconsistent with the Advisory Committee's recommendations. EPA remains committed to working with States to the greatest extent feasible to implement today's rule, consistent with the schedule promulgated today. For States unable to actively participate in IDSE implementation, however, EPA believes it has an obligation to provide support and guidance to PWSs who are covered and independently responsible for complying with the IDSE requirements of today's rule and is prepared to oversee implementation. Moreover, EPA believes that the staggered compliance schedule in today's final rule will enhance States' ability to help implement the rule.

Consecutive systems. Most commenters supported consecutive systems being on the same IDSE schedule as wholesale systems, recognizing the benefits of treatment plant capital and operational improvements by the wholesale system as the preferred method of DBP compliance, with the timely collection of DBP data throughout the combined distribution system a key component. Several commenters preferred that consecutive systems have a later Stage 2 compliance date to allow for evaluation of whether wholesale system treatment changes are adequate to ensure compliance and to consider changes to water delivery specifications.

EPA disagrees with those commenters recommending a different Stage 2 compliance date and thus has maintained the approach in the proposal, which keeps all systems that are part of a combined distribution system (the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water) on the same Stage 2 compliance schedule. Extending the Stage 2 compliance dates would unnecessarily delay the public health protection afforded by this rule. Consecutive systems must be able to evaluate whether wholesale system changes are sufficient to ensure compliance and, if they are not, to make cost-effective changes to ensure compliance where wholesale system efforts address some, but not all, of the concerns with compliance. Public health protection through compliance with Stage 2 MCLs will occur on the schedule of the largest system for all systems in the combined distribution system (regardless of size). If a consecutive system must make capital improvements to comply with this rule, the State may use its existing authority to grant up to an additional 24 months to that system. In addition, implementation and data tracking will be simplified because all systems in a combined distribution system will be on the same IDSE and Stage 2 compliance schedule. EPA believes that this is a better approach from both a public health standpoint and an implementation standpoint.

EPA agrees with many commenters that a high level of coordination among wholesaler, consecutive system, and States will be necessary to ensure compliance. The schedule in today's rule provides more time for planning, reviewing, and conducting the IDSE than the schedule in the proposed rule, which will allow more time for necessary coordination, including small consecutive systems that need help in negotiations with their wholesale system. EPA will work with ASDWA and States to develop guidance to facilitate wholesale/consecutive system cooperation. This additional time and the staggered schedule discussed in this section also lessens the laboratory burden associated with IDSE monitoring.

The staggered schedule also helps address commenter concerns about evaluating combined distribution systems. Other commenters' concerns about time needed for developing contracts between systems and for planning, funding, and implementing treatment changes are addressed by not requiring Stage 2 compliance until at least six years following rule promulgation.

F. Initial Distribution System Evaluation (IDSE)

1. Today's Rule

Today's rule establishes requirements for systems to perform an Initial Distribution System Evaluation (IDSE). The IDSE is intended to identify sample locations for Stage 2 compliance monitoring that represent distribution system sites with high DBP concentrations. Systems will develop an IDSE plan, collect data on DBP levels throughout their distribution system, evaluate these data to determine which sampling locations are most representative of high DBP levels, and compile this information into a report for submission to the State or primacy agency. Systems must complete one IDSE to meet the requirements of today's rule.

a. *Applicability.* This requirement applies to all community water systems, and to large nontransient noncommunity water systems (those serving at least 10,000 people) that use a primary or residual disinfectant other than ultraviolet light, or that deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light. Systems serving fewer than 500 people are covered by the very small system waiver provisions of today's rule and are not required to complete an IDSE if they have TTHM and HAA5 data collected under Subpart L. Consecutive systems are subject to the IDSE requirements of today's rule. Consecutive systems must comply with IDSE requirements on the same schedule as the system serving the largest population in the combined distribution system, as described in section IV.E.

b. Data collection. For those systems not receiving a very small system waiver, there are three possible approaches by which a system can meet the IDSE requirement.

i. Standard monitoring. Standard monitoring requires one year of DBP monitoring throughout the distribution system on a specified schedule. Prior to commencing standard monitoring, systems must prepare a monitoring plan and submit it to the primacy agency for review. The frequency and number of samples required under standard monitoring is determined by source water type and system size. The number of samples does not depend on the number of plants per system. Section IV.G provides a detailed discussion of the specific population-based monitoring requirements for IDSE standard monitoring. Although standard monitoring results are not to be used for determining compliance with MCLs,

systems are required to include individual sample results for the IDSE results when determining the range of TTHM and HAA5 levels to be reported in their Consumer Confidence Report (see section IV.J).

ii. System specific study. Under this approach, systems may choose to perform a system specific study based on earlier monitoring studies or distribution system hydraulic models in lieu of standard monitoring. Prior to commencing a system specific study, systems must prepare a study plan and submit it to the primacy agency for approval. The two options for system specific studies are: (1) TTHM and HAA5 monitoring data that encompass a wide range of sample sites representative of the entire distribution system, including those judged to represent high TTHM and HAA5 concentrations, and (2) extended period simulation hydraulic models that simulate water age in the distribution system, in conjunction with one round of TTHM and HAA5 sampling.

iii. 40/30 certification. Under this approach, systems must certify to their State or primacy agency that every individual compliance sample taken under subpart L during the period specified in Table IV.F–2 were less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5, and that there were no TTHM or HAA5 monitoring violations during the same period. The State or primacy agency may require systems to submit compliance monitoring results, distribution system schematics, or recommend subpart V compliance monitoring locations as part of the certification. This certification must be kept on file and submitted to the State or primacy agency for review. Systems that qualify for reduced monitoring for the Stage 1 DBPR during the two years prior to the start of the IDSE may use results of reduced Stage 1 DBPR monitoring to prepare the 40/30 certification. The requirements for the 40/30 certification are listed in Table IV.F–1.

TABLE IV.F–1.—40/30 CERTIFICATION REQUIREMENTS

40/30 Certification Requirements ...	• A certification that every individual compliance sample taken under subpart L during the period specified in Table IV.F–2 were less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5, and that there were no TTHM or HAA5 monitoring violations during the same period. • Compliance monitoring results, distribution system schematics, and/or recommended subpart V compliance monitoring locations as required by the State or primacy agency.

TABLE IV.F–2.—40/30 ELIGIBILITY DATES

If your 40/30 Certification Is Due	Then your eligibility for 40/30 certification is based on eight consecutive calendar quarters of subpart L compliance monitoring results beginning no earlier than[1]
(1) October 1, 2006	January 2004.
(2) April 1, 2007	January 2004.
(3) October 1, 2007	January 2005.
(4) April 1, 2008	January 2005.

[1] Unless you are on reduced monitoring under subpart L and were not required to monitor during the specified period. If you did not monitor during the specified period, you must base your eligibility on compliance samples taken during the 12 months preceding the specified period.

c. Implementation. All systems subject to the IDSE requirement under this final rule (except those covered by the very small system waiver) must prepare and submit an IDSE plan (monitoring plan for standard monitoring, study plan for system specific study) or 40/30 certification to the State or primacy agency. IDSE plans and 40/30 certifications must be submitted according to the schedule described in section IV.E and IV.M. The requirements for the IDSE plan depend on the IDSE approach that the system selects and are listed in Tables IV.F–1 and IV.F–3.

TABLE IV.F–3.—IDSE MONITORING PLAN REQUIREMENTS

IDSE data collection alternative	IDSE plan requirements
Standard Monitoring	• Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected subpart L compliance monitoring. • Justification for all standard monitoring locations selected and a summary of data relied on to select those locations. • Population served and system type (subpart H or ground water).
System Specific Study: Hydraulic Model	Hydraulic models must meet the following criteria: • Extended period simulation hydraulic model. • Simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time. • Represent 75% of pipe volume; 50% of pipe length; all pressure zones; all 12-inch diameter and larger pipes; all 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water; all pipes 6 inches and larger that connect remote areas of a distribution system to the main portion of the system; all storage facilities with standard operations represented in the model; all active pump stations with controls represented in the model; and all active control valves.

TABLE IV.F–3.—IDSE MONITORING PLAN REQUIREMENTS—Continued

IDSE data collection alternative	IDSE plan requirements
	• The model must be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. • All required calibration must be completed no later than 12 months after plan submission. Submission must include: • Tabular or spreadsheet data demonstrating percent of total pipe volume and pipe length represented in the model, broken out by pipe diameter, and all required model elements. • A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes for the model to reach a consistently repeating pattern of residence time). • Model output showing preliminary 24 hour average residence time predictions throughout the distribution system. • Timing and number of samples planned for at least one round of TTHM and HAA5 monitoring at a number of locations no less than would be required for the system under standard monitoring in § 141.601 during the historical month of high TTHM. These samples must be taken at locations other than existing subpart L compliance monitoring locations. • Description of how all requirements will be completed no later than 12 months after submission of the system specific study plan. • Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all subpart L compliance monitoring. • Population served and system type (subpart H or ground water). • If the model submitted does not fully meet the requirements, the system must correct the deficiencies and respond to State inquiries on a schedule the State approves, or conduct standard monitoring.
System Specific Study: Existing Monitoring Results	Existing monitoring results must meet the following criteria: • TTHM and HAA5 results must be based on samples collected and analyzed in accordance with § 141.131. Samples must be collected within five years of the study plan submission date. • The sampling locations and frequency must meet the requirements identified in Table IV.F–4. Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all subpart L compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements. Submission must include: • Previously collected monitoring results • Certification that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent subpart L results. • Certification that the samples were representative of the entire distribution system and that treatment and distribution system have not changed significantly since the samples were collected. • Schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring. • Population served and system type (subpart H or ground water). • If a system submits previously collected data that fully meet the number of samples required for IDSE monitoring in Table IV.F–4 and some of the data are rejected due to not meeting the additional requirements, the system must either conduct additional monitoring to replace rejected data on a schedule the State approves, or conduct standard monitoring.

TABLE IV.F–4.—SSS EXISTING MONITORING DATA SAMPLE REQUIREMENTS.

System type	Population size category	Number of monitoring locations	Number of samples	
			TTHM	HAA5
Subpart H:				
	<500	3	3	3
	500–3,300	3	9	9
	3,301–9,999	6	36	36
	10,000–49,999	12	72	72
	50,000–249,999	24	144	144
	250,000–999,999	36	216	216

TABLE IV.F–4.—SSS EXISTING MONITORING DATA SAMPLE REQUIREMENTS.—Continued

System type	Population size category	Number of monitoring locations	Number of samples	
			TTHM	HAA5
	1,000,000–4,999,999	48	288	288
	≥ 5,000,000	60	360	360
Ground Water:	<500	3	3	3
	500–9,999	3	9	9
	10,000–99,999	12	48	48
	100,000–499,999	18	72	72
	≥ 500,000	24	96	96

The State or primacy agency will approve the IDSE plan or 40/30 certification, or request modifications. If the State or primacy agency has not taken action by the date specified in section IV.E or has not notified the system that review is not yet complete, systems may consider their submissions to be approved. Systems must implement the IDSE option described in the IDSE plan approved by the State or primacy agency according to the schedule described in section IV.E.

All systems completing standard monitoring or a system specific study must submit a report to the State or primacy agency according to the schedule described in section IV.E. Systems that have completed their system specific study at the time of monitoring plan submission may submit a combined monitoring plan and report on the required schedule for IDSE plan submissions. The requirements for the IDSE report are listed in Table IV.F–5. Some of these reporting requirements have changed from the proposal to reduce reporting and paperwork burden on systems.

TABLE IV.F–5.—IDSE REPORT REQUIREMENTS

IDSE data collection alternative	IDSE report requirements
Standard Monitoring	• All subpart L compliance monitoring and standard monitoring TTHM and HAA5 analytical results in a tabular format acceptable to the State. • If changed from the monitoring plan, a schematic of the distribution system, population served, and system type. • An explanation of any deviations from the approved monitoring plan. • Recommendations and justifications for subpart V compliance monitoring locations and timing.
System Specific Study	• All subpart L compliance monitoring and all system specific study monitoring TTHM and HAA5 analytical results conducted during the period of the system specific study in a tabular or spreadsheet form acceptable to the State. • If changed from the study plan, a schematic of the distribution system, population served, and system type. • If using the modeling provision, include final information for required plan submissions and a 24-hour time series graph of residence time for each subpart V compliance monitoring location selected. • An explanation of any deviations from the original study plan. • All analytical and modeling results used to select subpart V compliance monitoring locations that show that the system specific study characterized TTHM and HAA5 levels throughout the entire distribution system. • Recommendations and justifications for subpart V compliance monitoring locations and timing.

All systems must prepare Stage 2 compliance monitoring recommendations. All IDSE reports must include recommendations for Stage 2 compliance monitoring locations and sampling schedule. Systems submitting a 40/30 certification must include their Stage 2 compliance monitoring recommendations in their Stage 2 (Subpart V) monitoring plan unless the State requests Subpart V site recommendations as part of the 40/30 certification. The number of sampling locations and the criteria for their selection are described in § 141.605 of today's final rule, and in section IV.G. Generally, a system must recommend locations with the highest LRAAs unless it provides a rationale (such as ensuring geographical coverage of the distribution system instead of clustering all sites in a particular section of the distribution system) for selecting other locations. In evaluating possible Stage 2 compliance monitoring locations, systems must consider both Stage 1 DBPR compliance data and IDSE data.

The State or primacy agency will approve the IDSE report or request modifications. If the State or primacy agency has not taken action by the date specified in section IV.E or has not notified the system that review is not yet complete, systems may consider their submission to be approved and prepare to begin Stage 2 compliance monitoring.

EPA has developed the Initial Distribution System Evaluation Guidance Manual for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule (USEPA 2006) to assist systems with implementing each of these requirements. This guidance may be requested from EPA's Safe Drinking

Water Hotline, which may be contacted as described under **FOR FURTHER INFORMATION CONTACT** in the beginning of this notice. This guidance manual is also available on the EPA Web site at *http://www.epa.gov/safewater/stage2/index.html.*

2. Background and Analysis

In the Stage 2 DBPR proposal (USEPA, 2003a), EPA proposed requirements for systems to complete an IDSE. The Agency based its proposal upon the Stage 2 M–DBP Advisory Committee recommendations in the Agreement in Principle. The Advisory Committee believed and EPA concurs that maintaining Stage 1 DBPR monitoring sites for the Stage 2 DBPR would not accomplish the risk-targeting objective of minimizing high DBP levels and providing consistent and equitable protection across the distribution system. Most of these requirements have not changed from the proposed rule.

The data collection requirements of the IDSE are designed to find both high TTHM and high HAA5 sites (see section IV.G for IDSE monitoring requirements). High TTHM and HAA5 concentrations often occur at different locations in the distribution system. The Stage 1 DBPR monitoring sites identified as the maximum location are selected according to residence time. HAAs can degrade in the distribution system in the absence of sufficient disinfectant residual (Baribeau et al. 2000). Consequently, residence time is not an ideal criterion for identifying high HAA5 sites. In addition, maximum residence time locations that are associated with high TTHM levels may not be constant due to daily or seasonal changes in demand. The analysis of maximum residence time completed for the selection of Stage 1 monitoring sites may not have been capable of detecting these variations. The Information Collection Rule data show that over 60 percent of the highest HAA5 LRAAs and 50 percent of the highest TTHM LRAAs were found at sampling locations in the distribution system other than the maximum residence time compliance monitoring location (USEPA 2003a). Therefore, the method and assumptions used to select the Information Collection Rule monitoring sites and the Stage 1 DBPR compliance monitoring sites may not reliably capture high DBP levels for Stage 2 DBPR compliance monitoring sites.

a. Standard monitoring. The Advisory Committee recommended that systems sample throughout the distribution system at twice the number of locations as required under Stage 1 and, using these results in addition to Stage 1 compliance data, identify high DBP locations. Monitoring at additional sites increases the chance of finding sites with high DBP levels and targets both DBPs that degrade and DBPs that form as residence time increases in the distribution system. EPA believes that the required number of standard monitoring locations plus Stage 1 monitoring results will provide an adequate characterization of DBP levels throughout the distribution system at a reasonable cost. By revising Stage 2 compliance monitoring plans to target locations with high DBPs, systems will be required to take steps to address high DBP levels at locations that might otherwise have gone undetected.

The Advisory Committee recommended that an IDSE be performed by all community water systems, unless the system had sufficiently low DBP levels or is a very small system with a simple distribution system. EPA believes that large nontransient noncommunity water systems (NTNCWS) (those serving at least 10,000 people) also have distribution systems that require further evaluation to determine the locations most representative of high DBP levels and proposed that they be required to conduct an IDSE. Therefore, large NTNCWS and all community water systems are required to comply with IDSE requirements under today's final rule, unless they submit a 40/30 certification or they are covered by the very small system waiver provisions.

b. Very small system waivers. Systems serving fewer than 500 people that have taken samples under the Stage 1 DBPR will receive a very small system waiver. EPA proposed and the Advisory Committee recommended a very small system waiver following a State determination that the existing Stage 1 compliance monitoring location adequately characterizes both high TTHM and high HAA5 for the distribution system because many very small systems have small or simple distribution systems. The final rule grants the very small system waiver to all systems serving fewer than 500 that have Stage 1 DBPR data. This provision was changed from the proposal to reflect that most very small systems that sample under the Stage 1 DBPR have sampling locations that are representative of both high TTHM and high HAA5 because most very small systems have small and simple distribution systems. In addition, many very small systems are ground water systems that typically have stable DBP levels that tend to be lower than surface water DBP levels. NRWA survey data show that free chlorine residual in very small systems (serving <500) at both average residence time and maximum residence time locations are lower than levels at both of those locations in larger systems, and the change in residual concentration between those two locations is smaller in very small systems compared to larger sized systems. The magnitude of the reduction in residual concentration gives an indication of how much disinfectant has reacted to form DBPs, including TTHM and HAA5. The smaller reduction in disinfectant concentration between average residence time and maximum residence time in very small systems compared to larger systems indicates that DBP formation potential is probably lower in very small systems compared to larger systems, and the likelihood for significant DBP variation within the distribution system of very small systems is low if the distribution system is small and not complex. However, there may be some small systems with extended or complex distribution systems that should be studied further to determine new sampling locations. For this reason, States or primacy agencies can require any particular very small system to conduct an IDSE. Very small systems subject to the Stage 2 DBPR that do not have a Stage 1 compliance monitoring location may monitor in accordance with the Stage 1 DBPR provisions to be eligible for this waiver.

c. 40/30 certifications. Systems that certify to their State or primacy agency that all compliance samples taken during eight consecutive calendar quarters prior to the start of the IDSE were ≤0.040 mg/L TTHM and ≤0.030 mg/L HAA5 are not required to collect additional DBP monitoring data under the IDSE requirements as long as the system has no TTHM or HAA5 monitoring violations. These criteria were developed because both EPA and the AdvisoryCommittee determined that these systems most likely would not have DBP levels that exceed the MCLs. Systems must have qualifying TTHM and HAA5 data for eight consecutive calendar quarters according to the schedule in Table IV.F–2 to be eligible for this option. Systems on reduced monitoring that did not monitor during the specified time period may use data from the prior year to meet the 40/30 certification criteria. Systems that have not previously conducted Stage 1 DBPR compliance monitoring may begin such monitoring to collect the data necessary to qualify for 40/30 certification. The certification and data supporting it must be available to the public upon request.

The qualifying time period for the 40/30 certification has changed from the proposed rule.

Under the proposed rule, the rule language identified a specific two year window with start and end dates. In today's final rule, the qualifying time period has been changed to "eight consecutive calendar quarters of subpart L compliance monitoring results beginning no earlier than * * *" (see Table IV.F–2). This change was made so that systems that have made a treatment change within the two years prior to rule promulgation and have collected initial data that meet the 40/30 criteria might have the opportunity to collect eight consecutive quarters of qualifying data and apply for a 40/30 certification. This schedule change also allows systems that have not previously monitored under Stage 1 an opportunity to qualify for a 40/30 certification.

Under the proposed Stage 2 DBPR, systems that missed the deadline for submitting a 40/30 certification would be required to conduct either standard monitoring or a system specific study even if the system otherwise qualified for the 40/30 certification. Under today's final rule, systems that do not make any submission by the IDSE plan submission deadline will still receive a violation, but may submit a late 40/30 certification if their data meet the requirements. This change was made so that systems and primacy agencies do not spend time preparing and reviewing standard monitoring plans and IDSE reports for systems with a low likelihood of finding high TTHM and HAA5 levels.

The reporting requirements for this provision have been reduced from the requirements in the proposed rulemaking. In the proposal, systems qualifying for the 40/30 certification were required to submit all qualifying data and provide recommendations for Stage 2 compliance monitoring locations. The final rule requires systems to submit a certification that their data meet all the requirements of the 40/30 certification and to include their Stage 2 compliance monitoring recommendations in their Stage 2 monitoring plan. These changes were made to reduce the reporting burden on systems that qualify for the 40/30 certification and to maintain consistency with monitoring plan requirements under the Stage 1 DBPR. This approach also gives systems more time to select appropriate monitoring sites for Stage 2 compliance monitoring. The State or primacy agency may request systems to submit the data, a distribution system schematic, and/or recommendations for Stage 2 compliance monitoring as part of the 40/30 certification. This provision was included to facilitate primacy agency review of 40/30 certifications; the additional information is only required if requested by the primacy agency.

d. System specific studies. Advisory Committee members recognized that some systems have detailed knowledge of their distribution systems by way of ongoing hydraulic modeling and/or existing widespread monitoring plans (beyond that required for compliance monitoring) that would provide equivalent or superior monitoring site selection information compared to standard monitoring. Therefore, the Advisory Committee recommended that such systems be allowed to determine new monitoring sites using system-specific data such as hydraulic model results or existing monitoring data; this provision remains in the final rule. In the proposed rule, the only specification for SSSs was to identify monitoring sites that would be equivalent or superior to those identified under Standard Monitoring. The final rule includes more specific requirements on how these studies should be completed. The requirements in the final rule were developed to be consistent with the proposal, yet more specific to help systems better understand expectations under this provision and lessen the chances of a study plan not being approved.

The new modeling requirements were developed to reflect that hydraulic models can identify representative high TTHM monitoring locations by predicting hydraulic residence time in the distribution system. Water age has been found to correlate with TTHM formation in the distribution system. Consequently, for this system specific study approach, hydraulic residence time predicted by the model is used as a surrogate for TTHM formation to locate appropriate Stage 2 compliance monitoring locations. To predict hydraulic residence time in the distribution system, the model must represent most of the distribution system and must have been calibrated recently and appropriately to reflect water age in the distribution system. Requirements to reflect this are in today's rule. All storage facilities must be evaluated for the calibration, and systems using this option must submit a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone. These calibration requirements are focused on storage facilities because they are the largest controlling factor for water age in the distribution system. The calibration requirements reflect the fact that the purpose of the model is to predict water age. ICR data show that HAA5 data do not necessarily correlate well with water age (USEPA 2003a). Because the purpose of the IDSE is to locate representative high locations for both TTHM and HAA5, one round of monitoring must be completed at potential Stage 2 compliance monitoring locations to determine appropriate HAA5 monitoring locations during the historical high month of TTHM concentrations. The number of locations must be no less than would be required under standard monitoring.

Preliminary average residence time data are required as a part of the study plan for systems to demonstrate that their distribution system hydraulic model is able to produce results for water age throughout the distribution system, even though calibration may not be complete. Systems also need to describe their plans to complete the modeling requirements within 12 months of submitting the study plan. These last two requirements were developed so that States can be assured that systems have the technical capacity to complete their modeling requirements by the IDSE report deadline. If systems cannot demonstrate that they are in a position to complete the modeling requirements according to the required schedule, they will be required to complete standard monitoring.

All new modeling requirements were added to help systems demonstrate how their model will fulfill the purpose and requirements of the IDSE and to assist primacy agencies with approval determinations. The associated reporting requirements were developed to balance the needs of systems to demonstrate that they have fulfilled the requirements and the needs of primacy agency reviewers to be able to understand the work completed by the system.

EPA has specified new requirements for systems complete an SSS using existing monitoring data to help systems understand the extent of historical data that would meet the requirements of the IDSE. The number of required sample locations and samples are consistent with sampling requirements under standard monitoring and the recommendations made by the Advisory Committee. The Advisory Committee recommended that systems complete an IDSE sample at twice the number of sites required by the Stage 1 DBPR in addition to Stage 1 DBPR sampling. Because the number of required Stage 1 DBPR monitoring locations varies within each population category under

the Stage 1 plant-based monitoring approach (since systems have different numbers of plants), EPA used the number of required Standard Monitoring locations plus the number of Stage 2 compliance monitoring locations to develop minimum requirements for the use of existing monitoring data for the SSS. The number of required locations and samples are shown in Table IV.F–4. Systems will use their Stage 1 monitoring results plus additional non-compliance or operational samples to fulfill these requirements. Small systems with many plants may have been collecting a disproportionate number of samples under the Stage 1 DBPR compared to the population based monitoring requirements presented in today's rule and may have sufficient historical data to characterize the entire distribution system. These requirements allow those systems to submit an SSS based on existing Stage 1 monitoring results, and they also accommodate systems that have been completing additional monitoring throughout the distribution system.

The requirement to sample during the historical month of high TTHM, high HAA5, or warmest water temperature during each year for which data were collected was added to maintain consistency with the standard monitoring requirements where each location must be sampled one time during the peak historical month. Samples that qualify for this SSS must have been collected within five years of the study plan submission date and must reflect the current configuration of treatment and the distribution system. Five years was selected as a cut off for eligible data so that all data submitted would be reasonably representative of current source water conditions and DBP formation within the distribution system. Data that are older may not reflect current DBP formation potential in the distribution system. Five years prior to the submission of the study plan also correlates with the signing of the Agreement in Principle where the Advisory Committee made the recommendation for this provision. Systems interested in using this provision would have started eligible monitoring after the agreement was signed.

Systems that submit existing monitoring data must submit all Stage 1 sample results from the beginning of the SSS to the time when the SSS plan is submitted. The purpose of this requirement is to demonstrate that there have been no significant changes in source water quality since the first samples were collected, especially if all existing monitoring results were taken during the earliest eligible dates. Again, these clarifications were made so that systems could better understand the extent of data necessary for a monitoring plan to be deemed acceptable and be confident that efforts to complete an SSS would be found acceptable to the State or primacy agency.

e. Distribution System Schematics. EPA has considered security concerns that may result from the requirement for systems to submit a distribution system schematic as part of their IDSE plan. EPA believes that the final rule strikes an appropriate balance between security concerns and the need for States and primacy agencies to be able to review IDSE plans. EPA has developed guidance for systems on how to submit a distribution system schematic that does not include sensitive information.

3. Summary of Major Comments

The Agency received significant comments on the following issues related to the proposed IDSE requirements: Waiver limitations, and State or primacy agency review of IDSE plans.

In the proposed rule, EPA requested comment on what the appropriate criteria should be for States or primacy agencies to grant very small system waivers. Commenters responded with a wide range of suggestions including support for the proposal as written, different population cut-offs, State or primacy agency discretion on what system size should qualify for the waiver, and alternative waiver criteria such as pipe length or number of booster stations. There was no consensus among the commenters on what changes should be made to the proposal for the very small system waiver requirements. EPA did not change the population cutoff for the very small system waiver because analysis of NRWA survey data also showed that systems serving fewer than 500 had different residence times and lower free chlorine residual concentrations compared to other population categories, indicating that larger systems have different DBP formation characteristics compared to very small systems. Some of the suggested changes for very small system waiver criteria may require data that are not readily available to systems (such as pipe length in service) and for which there were no specific criteria proposed or recommended by the commenters. Implementation of subjective very small system waiver criteria would result in reduced public health protection from the rule by allowing higher DBP levels to go undetected.

In addition to addressing the very small system waivers, commenters suggested that different criteria should be used for the 40/30 certification, such as higher minimum DBP levels, cut-offs of 40/30 as LRAAs or RAAs rather than single sample maximums, or State or primacy agency discretion on which systems should qualify for 40/30 certification. There was no consensus among the commenters on what changes should be made to the proposal for the 40/30 certification requirements. EPA did not change the requirements for the 40/30 certification eligibility because the recommended alternatives were not technically superior to the requirements of the proposed rule. Implementation of 40/30 criteria using an LRAA or RAA would result in reduced public health protection from the rule by allowing higher DBP levels to go undetected. EPA did change the eligibility dates and reporting requirements for the 40/30 certification to reduce the burden on the system. Under today's final rule, States or primacy agencies can request TTHM and HAA5 data as desired for a more in-depth review of a system's qualifications.

Many commenters expressed concern over the implementation schedule for the IDSE. Commenters were especially concerned that IDSE plans would be developed and implemented prior to State primacy, and once States receive primacy, they might not support the IDSE plan and would reject the results of the completed IDSE. To address this issue, commenters requested the opportunity for States to review the IDSE plans prior to systems completing their IDSEs. In today's rule EPA has modified the compliance schedule for the Stage 2 DBPR so that systems have the opportunity to complete their IDSE plan and have it reviewed by the primacy agency prior to completing the IDSE to address the concern that States or primacy agencies may reject the results of the completed IDSE. The changes to the compliance schedule are discussed further in section IV.E.

G. Monitoring Requirements and Compliance Determination for TTHM and HAA5 MCLs

EPA is finalizing monitoring requirements under a population-based approach described in this section. EPA believes the population-based approach will provide more representative high DBP concentrations throughout distribution systems than would plant-based monitoring, is equitable, and will simplify implementation for both States and systems. For these reasons, EPA believes this approach is more appropriate than the proposed plant-

based monitoring. Detailed discussion of the two approaches is presented in the preamble of the proposed rule (USEPA 2003a) and EA for today's rule (USEPA 2005a).

1. Today's Rule

Today's rule establishes TTHM and HAA5 monitoring requirements for all systems based on a population-based monitoring approach instead of a plant-based approach. Under the population-based approach, monitoring requirements are based solely on the retail population served and the type of source water used and not influenced by the number of treatment plants or entry points in the distribution system as in previous rules (i.e., TTHM Rule (USEPA 1979) and Stage 1 DBPR (USEPA 1998a)).

a. IDSE Monitoring. All systems conducting IDSE standard monitoring must collect samples during the peak historical month for DBP levels or water temperature; this will determine their monitoring schedule. Table IV.G–1 contains the IDSE monitoring frequencies and locations for all source water and size category systems. Section IV.F identifies other approaches by which systems can meet IDSE requirements.

TABLE IV.G–1.—IDSE MONITORING FREQUENCIES AND LOCATIONS

Source water type	Population size category	Monitoring periods and frequency of sampling	Distribution system monitoring locations [1]				
			Total per monitoring period	Near entry points	Average residence time	High TTHM locations	High HAA5 locations
Subpart H	<500 consecutive systems.	one (during peak historical month) [2].	2	1	.....	1	
	<500 non-consecutive systems.	.....	2	.....	.....	1	1
	500–3,300 non-consecutive systems.	four (every 90 days)	2	1	.....	1	.....
	500–3,300 consecutive systems.	.....	2	.....	.....	1	1
	3,301–9,999	.....	4	.....	1	2	1
	10,000–49,999	six (every 60 days)	8	1	2	3	2
	50,000–249,999	.....	16	3	4	5	4
	250,000–999,999	.....	24	4	6	8	6
	1,000,000–4,999,999	.....	32	6	8	10	8
	≥5,000,000	.....	40	8	10	12	10
Ground Water	<500 consecutive systems.	one (during peak historical month) [2].	2	1	.....	1	.....
	<500 non-consecutive systems.	.....	2	.....	.....	1	1
	500–9,999	four (every 90 days)	2	.....	.....	1	1
	10,000–99,999	.....	6	1	1	2	2
	100,000–499,999	.....	8	1	1	3	3
	≥500,000	.....	12	2	2	4	4

[1] A dual sample set (i.e., a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.
[2] The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

b. Routine Stage 2 Compliance Monitoring. For all systems conducting either standard monitoring or a system specific study, initial Stage 2 compliance monitoring locations are based on the system's IDSE results, together with an analysis of a system's Stage 1 DBPR compliance monitoring results. Systems receiving 40/30 certification or a very small system waiver, and nontransient noncommunity water systems serving <10,000 not required to conduct an IDSE, base Stage 2 initial compliance monitoring locations on the system's Stage 1 DBPR compliance monitoring results. Some of these systems may also need an evaluation of distribution system characteristics to identify additional monitoring locations, if required by the transition from plant-based monitoring to population-based monitoring.

Systems recommend Stage 2 monitoring locations generally by arraying results of IDSE standard monitoring (or system specific study results) and Stage 1 compliance monitoring by monitoring location (from highest to lowest LRAA for both TTHM and HAA5). Using the protocol in § 141.605(c) of today's rule, systems then select the required number of locations. Larger systems include existing Stage 1 monitoring locations in order to be able to have historical continuity for evaluating how changes in operations or treatment affect DBP levels. Systems may also recommend locations with lower levels of DBPs that would not be picked up by the protocol if they provide a rationale for the recommendation. Examples of rationales include ensuring better distribution system or population coverage (not having all locations in the same area) or maintaining existing locations with DBP levels that are nearly as high as those that would otherwise be selected. The State or primacy agency will review these recommendations as part of the review of the IDSE report submitted by systems that conducted standard monitoring or a system specific study.

Table IV.G–2 contains the routine Stage 2 TTHM and HAA5 compliance

monitoring requirements for all systems (both non-consecutive and consecutive systems), as well as the protocol for Stage 2 compliance monitoring location selection in the IDSE report. Systems that do not have to submit an IDSE report (those receiving a 40/30 certification or very small system waiver and nontransient noncommunity water systems serving <10,000) must conduct Stage 2 compliance monitoring as indicated in the "Total per monitoring period" column at current Stage 1 compliance monitoring locations, unless the State or primacy agency specifically directs otherwise. All systems are then required to maintain and follow a Stage 2 compliance monitoring plan.

TABLE IV.G–2. ROUTINE COMPLIANCE MONITORING FREQUENCIES AND LOCATIONS

Source water type	Population size category	Monitoring frequency[1]	Distribution system monitoring location			
			Total per monitoring period[2]	Highest TTHM locations	Highest HAA5 locations	Existing Subpart L compliance locations
Subpart H:						
	<500	per year	2	1	1	.....
	500–3,300	per quarter	2	1	1	.....
	3,301–9,999	per quarter	2	1	1	.....
	10,000–49,999	per quarter	4	2	1	1
	50,000–249,999	per quarter	8	3	3	2
	250,000–999,999	per quarter	12	5	4	3
	1,000,000–4,999,999	per quarter	16	6	6	4
	≥ 5,000,000	per quarter	20	8	7	5
Ground water:						
	<500	per year	2	1	1	.....
	500–9,999	per year	2	1	1	.....
	10,000–99,999	per quarter	4	2	1	1
	100,000–499,999	per quarter	6	3	2	1
	≥ 500,000	per quarter	8	3	3	2

[1] All systems must monitor during month of highest DBP concentrations.
[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month, if monitored annually).

Today's rule provides States the flexibility to specify alternative Stage 2 compliance monitoring requirements (but not alternative IDSE monitoring requirements) for multiple consecutive systems in a combined distribution system. As a minimum under such an approach, each consecutive system must collect at least one sample among the total number of samples required for the combined distribution system and will base compliance on samples collected within its distribution system. The consecutive system is responsible for ensuring that required monitoring is completed and the system is in compliance. It also must document its monitoring strategy as part of its subpart V monitoring plan.

Consecutive systems not already conducting disinfectant residual monitoring under the Stage 1 DBPR must comply with the monitoring requirements and MRDLs for chlorine and chloramines. States may use the provisions of § 141.134(c) to modify reporting requirements. For example, the State may require that only the consecutive system distribution system point-of-entry disinfectant concentration be reported to demonstrate MRDL compliance, although monitoring requirements may not be reduced.

i. Reduced monitoring. Systems can qualify for reduced monitoring, as specified in Table IV.G–3, if the LRAA at each location is ≤0.040 mg/L for TTHM and ≤0.030 mg/L for HAA5 based on at least one year of monitoring at routine compliance monitoring locations. Systems may remain on reduced monitoring as long as the TTHM LRAA is ≤0.040 mg/L and the HAA5 LRAA is ≤0.030 mg/L at each monitoring location for systems with quarterly reduced monitoring. If the LRAA at any location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any of the system's treatment plants treating surface water or ground water under the direct influence of surface water, the system must resume routine monitoring. For systems with annual or less frequent reduced monitoring, systems may remain on reduced monitoring as long as each TTHM sample is ≤0.060 mg/L and each HAA5 sample is ≤0.045 mg/L. If the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, the system must resume routine monitoring.

TABLE IV.G–3.—REDUCED MONITORING FREQUENCY

Source water type	Population size category	Monitoring frequency [1]	Distribution system monitoring location per monitoring period
Subpart H:			
	<500	.....	Monitoring may not be reduced.

TABLE IV.G–3.—REDUCED MONITORING FREQUENCY—Continued

Source water type	Population size category	Monitoring frequency [1]	Distribution system monitoring location per monitoring period
	500–3,300	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	3,301–9,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	10,000–49,999	per quarter	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs.
	50,000–249,999	per quarter	4 dual sample sets—at the locations with the two highest TTHM and two highest HAA5 LRAAs.
	250,000–999,999	per quarter	6 dual sample sets—at the locations with the three highest TTHM and three highest HAA5 LRAAs
	1,000,000–4,999,999.	per quarter	8 dual sample sets—at the locations with the four highest TTHM and four highest HAA5 LRAAs.
	≥5,000,000	per quarter	10 dual sample sets—at the locations with the five highest TTHM and five highest HAA5 LRAAs.
Ground Water:			
	<500	every third year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	500–9,999	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	10,000–99,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	100,000–499,999	per quarter	2 dual sample sets; at the locations with the highest TTHM and highest HAA5 LRAAs.
	≥500,000	per quarter	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

[1] Systems on quarterly monitoring must take dual sample sets every 90 days.

ii. Compliance determination. A PWS is in compliance when the annual sample or LRAA of quarterly samples is less than or equal to the MCLs. If an annual sample exceeds the MCL, the system must conduct increased (quarterly) monitoring but is not immediately in violation of the MCL. The system is out of compliance if the LRAA of the quarterly samples for the past four quarters exceeds the MCL.

Monitoring and MCL violations are assigned to the PWS where the violation occurred. Several examples are as follows:

- If monitoring results in a consecutive system indicate an MCL violation, the consecutive system is in violation because it has the legal responsibility for complying with the MCL under State/EPA regulations. The consecutive system may set up a contract with its wholesale system that details water quality delivery specifications.
- If a consecutive system has hired its wholesale system under contract to monitor in the consecutive system and the wholesale system fails to monitor, the consecutive system is in violation because it has the legal responsibility for monitoring under State/EPA regulations.
- If a wholesale system has a violation and provides that water to a consecutive system, the wholesale system is in violation. Whether the consecutive system is in violation will depend on the situation. The consecutive system will also be in violation unless it conducted monitoring that showed that the violation was not present in the consecutive system.

2. Background and Analysis

EPA proposed the plant-based approach for all systems that produce some or all of their finished water and the population-based monitoring approach for systems purchasing all of their finished water year-round. As part of the proposal, EPA presented a monitoring cost analysis for applying this approach to all systems in the Economic Analysis to better understand the impacts of using the population-based approach.

The plant-based approach was adopted from the 1979 TTHM rule and the Stage 1 DBPR and was derived from the generally valid assumption that, as systems increase in size, they tend to have more plants and increased complexity. During the development of the Stage 2 proposal, EPA identified a number of issues associated with the use of the plant-based monitoring approach. These included: (1) Plant-based monitoring is not as effective as population-based monitoring in targeting locations with the highest risk; (2) a plant-based approach can result in disproportionate monitoring requirements for systems serving the same number of people (due to widely varying numbers of plants per system); (3) it cannot be adequately applied to plants or consecutive system entry points that are operated seasonally or intermittently if an LRAA is used for compliance due to complex implementation and a need for repeated transactions between the State and

system to determine whether and how compliance monitoring requirements may need to be changed; (4) State determinations of monitoring requirements for consecutive systems would be complicated, especially in large combined distribution systems with many connections between systems; and (5) systems with multiple disinfecting wells would have to conduct evaluation of common aquifers in order to avoid taking unnecessary samples for compliance (if they did not conduct such evaluations under Stage 1). EPA requested comment on two approaches to address these issues: (1) keep the plant-based monitoring approach and add new provisions to address specific concerns; and (2) base monitoring requirements on source water type and population served, in lieu of plant-based monitoring.

The final rule's requirements of population-based monitoring for all systems are based on improved public health protection, flexibility, and simplified implementation. For determining monitoring requirements, EPA's objective was to maintain monitoring loads consistent with Stage 1 and similar to monitoring loads proposed for Stage 2 under a plant-based approach, using a population-based approach to facilitate implementation, better target high DBP levels, and protect human health. This leads to a more cost-effective characterization of where high levels occur. For the proposed rule, EPA used 1995 CWSS data to derive the number of plants per system for calculating the number of proposed monitoring sites per system. During the comment period, 2000 CWSS data became available. Compared to the 1995 CWSS, the 2000 CWSS contained questions more relevant for determining the number of plants in each system. Based on 2000 CWSS data, EPA has modified the number of monitoring sites per system for several categories (particularly for the larger subpart H systems) to align the median population-based monitoring requirements with the median monitoring requirements under plant-based monitoring, as was proposed.

EPA also believes that more samples are necessary to characterize larger systems (as defined by population) than for smaller systems. This progressive approach is included in Table IV.G–4. As system size increases, the number of samples increases to better reflect the hydraulic complexity of these systems. While the national monitoring burden under the population-based approach is slightly less than under a plant-based approach, some larger systems with few plants relative to system population will take more samples per system than they had under plant-based monitoring. However, EPA believes that many of these large systems with few plants have traditionally been undermonitored (as noted in the proposal). Systems with more plants will see a reduction in monitoring (e.g., small ground water systems with multiple wells).

While population-based monitoring requirements for ground water systems in today's rule remain the same as those in the proposed rule, the final rule consolidates ten population categories for subpart H systems into eight categories for ease of implementation. As indicated in Table IV.G–4, EPA has gone from four to three population size categories for smaller subpart H systems (serving fewer than 10,000 people) and the ranges have been modified to be consistent with those for other existing rules (such as the Lead and Copper Rule). This change will reduce implementation transactional costs. For medium and large subpart H systems (serving at least 10,000 people), EPA has gone from seven categories in the proposal to five categories in final rule. The population groups are sized so that the ratio of maximum population to minimum population for each of the categories is consistent. EPA believes that this will allow most systems to remain in one population size category and maintain the same monitoring requirements within a reasonable range of population variation over time. In addition, it assures that systems within a size category will not have disparate monitoring burdens as could occur if there were too few categories. Overall, EPA believes that the population-based monitoring approach allows systems to have more flexibility to designate their monitoring sites within the distribution system to better target high DBP levels and is more equitable.

To derive the number of monitoring sites for IDSE standard monitoring, EPA doubled the number of routine compliance monitoring sites per system for each size category. This is consistent with the advice and recommendations of the M-DBP Advisory Committee for the IDSE. EPA has developed the Initial Distribution System Evaluation Guidance Manual for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule (USEPA 2006) to assist systems in choosing IDSE monitoring locations, including criteria for selecting monitoring.

TABLE IV.G–4.—COMPARISON OF MONITORING LOCATIONS PER SYSTEM FOR STAGE 2 ROUTINE COMPLIANCE MONITORING WITH PLANT-BASED AND POPULATION-BASED APPROACHES

Population category	Ratio of maximum population to minimum population	Number of sampling periods per year	Plant-based approach*	Number of plants per system (Based on 2000 CWSS data)		Calculated number of sites per system for plant-based approach		Number of monitoring sites per system for pop-based approach
			# Sites per plant	Median	Mean	Based on median # plants per system	Based on mean # plants per system	
		A	B	C	D	E=B*C	F=B*D	G
<500		1	**1	1	1.21	1	1.2	**1
500–3,300	6.6	4	**1	1	1.22	1	1.2	**1
3,301–9,999	3	4	2	1	1.56	2	3.1	2
10,000–49,999	5	4	4	1	1.37	4	5.5	4
50,000–249,999	5	4	4	1	1.83	4	7.3	8
250,000–<1 million	4	4	4	2	2.53	8	10.1	12
1 million–<5 million	5	4	4	4	3.62	16	14.5	16
≥5 million		4	4	4	4.33	16	17.3	20

* As in the proposal.

** System is required to take individual TTHM and HAA5 samples at the locations with the highest TTHM and HAA5 concentrations, respectively, if highest TTHM and HAA5 concentrations do not occur at the same location.

Note: To determine the number of routine compliance monitoring sites per population category, EPA took these steps: (1) Maintaining about the same sampling loads in the nation as required under the plant-based approach, but basing on population rather than number of plants to better target high DBP levels in distribution systems and facilitate implementation; (2) The number of monitoring sites per plant under the plant-based approach (Column B) were multiplied by the number of plants per system (Columns C and D) to calculate the number of monitoring sites per system under the plant-based approach (Columns E and F in terms of median and mean, respectively); and (3) The number of monitoring sites per system under the population-based approach were derived with adjustments to keep categories consistent and to maintain an even incremental trend as the population size category increases (Column G).

3. Summary of Major Comments

EPA received significant support for applying the population-based approach to all systems. EPA also received comments concerning the specific requirements in a population-based approach.

Excessive Sampling Requirements. Several commenters believed that the proposed sampling requirements were excessive (especially in the larger population categories for subpart H systems) and that some individual systems would be required to sample more under the population-based approach than the plant-based approach. EPA recognizes that a small fraction of systems in some categories will have to take more samples under the population-based approach than the plant-based approach because their number of plants is substantially less than the national median or mean. However, the number of samples required under the Stage 1 DBPR for these systems may not have been sufficient to determine the concentrations of DBPs throughout the distribution system of these systems. On the other hand, systems with many plants may have taken excessive samples under the Stage 1 DBPR that were not necessary to appropriately determine DBP levels throughout the distribution system. Consequently, the total number of samples taken nationally will be comparable to the Stage 1 DBPR, but will better target DBP risks in individual distribution systems.

Consecutive systems. Some commenters noted that a consecutive system may need to take more samples than its associated wholesale system. Under today's rule, all systems, including consecutive systems, must monitor based on retail population served. Thus, large consecutive systems will take more samples than a smaller wholesale system. The population-based monitoring approach will allow the samples to better represent the DBP concentrations consumed by the population associated with the sampling locations and to understand the DBP concentrations reaching consumers. There is also a provision that allows States to specify alternative monitoring requirements for a consecutive system in a combined distribution system (40 CFR 142.16(m)(3)). This special primacy condition allows the State to establish monitoring requirements that account for complicated distribution system relationships, such as where neighboring systems buy from and sell to each other regularly throughout the year. In this case, water may pass through multiple consecutive systems before it reaches a user. Another example would be a large group of interconnected systems that have a complicated combined distribution system. This approach also allows the combined distribution system to concentrate IDSE and Stage 2 monitoring sites in the system with the highest known DBP concentrations, while assigning fewer sample sites to systems with low DBP concentrations.

Population Size Categories. Some commenters recommended fewer population categories for subpart H systems (those using surface water or ground water under the direct influence of surface water as a source) than proposed while others recommended more. Today's rule has fewer categories than proposed. However, EPA believes that further reduction of the number of population size categories will not reflect the fact that the number of plants and complexity of distribution systems (and DBP exposure) tend to increase as the population served increases. As a result, the population served by a large system in one particular category would receive much less protection from the DBP risks than a smaller system in the same size category. On the other hand, too many categories with smaller population ranges would result in frequent category and requirement shifts as population fluctuates. Much greater implementation effort would be needed for those systems without much benefit in DBP exposure knowledge.

Population Definition. Some commenters supported use of the population of a combined distribution system (i.e., the wholesale and consecutive systems should be considered a single system for monitoring purposes) while others preferred use of the retail population for each individual system (i.e., wholesale systems and consecutive systems are considered separately). Today's final rule uses the retail population for each individual system. EPA chose this approach for today's rule because of the complexity involved in making implementation decisions for consecutive systems. Using the retail population to determine requirements eases the complexity by specifying minimum system-level requirements; simplicity is essential for meeting the implementation schedule in today's rule. If monitoring requirements were determined by the combined distribution system population, many implementation problems would occur. Some of these problems would have the potential to impact public health protection. For example, States or primacy agencies would have to decide how to allocate IDSE distribution system samples (where and how much to monitor in individual PWSs) in a complicated combined distribution system with many systems, multiple sources, multiple treatment plants, and varying water demand and with limited understanding of DBP levels throughout the combined distribution system. This would have to happen shortly after rule promulgation in order to meet the schedule. For example, some consecutive systems buy water seasonally (in times of high water demand) or buy from more than one wholesale system (with the volume purchased based on many factors). The State or primacy agency would find it difficult to properly assign a limited number of IDSE monitoring locations (especially since there are States where many consecutive systems have no DBP data) to adequately reflect DBP levels in such a system, as well as throughout the combined distribution system.

EPA believes that assigning compliance monitoring requirements appropriately throughout the combined distribution system requires a case-by-case determination based on factors such as amount and percentage of finished water provided; whether finished water is provided seasonally, intermittently, or full-time; and improved DBP occurrence information. Since the IDSE will provide improved DBP occurrence information throughout the combined distribution system, States may consider modifications to Stage 2 compliance monitoring requirements for consecutive systems on a case-by-case basis as allowed by § 141.29 or under the special primacy condition at § 142.16(m)(3) by taking all these factors into consideration. In making these case-by-case determinations, the State will be able to use its system-specific knowledge, along with the IDSE results, to develop an appropriate monitoring plan for each

system within the combined distribution system.

Changes to monitoring plans. Commenters requested more specific language regarding how IDSE and Stage 2 monitoring plans should be updated as a result of treatment or population changes in the distribution system. Changes to IDSE plans should not be necessary since the State or primacy agency will have reviewed those plans shortly before the system must conduct the IDSE and the reviewed plan should identify such issues. EPA provided a process in the Stage 2 DBPR proposal for updating monitoring plans for systems that have significant changes to treatment or in the distribution system after they complete their IDSE. This process remains in today's rule, with an added requirement that systems must consult with the State or primacy agency to determine whether the changes are necessary and appropriate prior to implementing changes to their Stage 2 monitoring plan.

In addition, the State or primacy agency may require a system to revise its IDSE plan, IDSE report, or Stage 2 monitoring plan at any time. This change was made so that systems could receive system-specific guidance from the State or primacy agency on the appropriate revisions to the Stage 2 monitoring plan. Regulatory language regarding changes that might occur is not appropriate because any modifications would be system-specific and a national requirement is not capable of addressing these system-specific issues.

H. Operational Evaluation Requirements Initiated by TTHM and HAA5 Levels

A system that is in full compliance with the Stage 2 DBPR LRAA MCL may still have individual DBP measurements that exceed the Stage 2 DBPR MCLs, since compliance is based on individual DBP measurements at a location averaged over a four-quarter period. EPA and the Advisory Committee were concerned about these higher levels of DBPs. This concern was clearly reflected in the Agreement in Principle, which states, ". . . significant excursions of DBP levels will sometimes occur, even when systems are in full compliance with the enforceable MCL. . .".

Today's final rule addresses this concern by requiring systems to conduct operational evaluations that are initiated by operational evaluation levels identified in Stage 2 DBPR compliance monitoring and to submit an operational evaluation report to the State.

1. Today's Rule

Today's rule defines the Stage 2 DBP operational evaluation levels that require systems to conduct operational evaluations. The Stage 2 DBP operational evaluation levels are identified using the system's Stage 2 DBPR compliance monitoring results. The operational evaluation levels for each monitoring location are determined by the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, at that location, divided by 4 to determine an average and the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, at that location, divided by 4 to determine an average. If the average TTHM exceeds 0.080 mg/L at any monitoring location or the average HAA5 exceeds 0.060 mg/L at any monitoring location, the system must conduct an operational evaluation and submit a written report of the operational evaluation to the State.

Operational evaluation levels (calculated at each monitoring location)

IF $(Q_1 + Q_2 + 2Q_3)/4 >$ MCL, then the system must conduct an operational evaluation

where:

Q_3 = current quarter measurement
Q_2 = previoius quarter measurement
Q_1 = quarter before previous quarter measurement

MCL = Stage 2 MCL for TTHM (0.080 mg/l) *or* Stage 2 MCL for HAA5 (0.060 mg/L)

The operational evaluation includes an examination of system treatment and distribution operational practices, including changes in sources or source water quality, storage tank operations, and excess storage capacity, that may contribute to high TTHM and HAA5 formation. Systems must also identify what steps could be considered to minimize future operational evaluation level exceedences. In cases where the system can identify the cause of DBP levels that resulted in the operational evaluation, based on factors such as water quality data, plant performance data, and distribution system configuration the system may request and the State may allow limiting the evaluation to the identified cause. The State must issue a written determination approving limiting the scope of the operational evaluation. The system must submit their operational evaluation report to the State for review within 90 days after being notified of the analytical result that initiates the operational evaluation. Requesting approval to limit the scope of the operational evaluation does not extend the schedule (90 days after notification of the analytical result) for submitting the operational evaluation report.

2. Background and Analysis

The Stage 2 DBPR proposal outlined three components of the requirements for significant excursions (definition, system evaluation and excursion report). In response to public comments, the term "significant excursion" has been replaced by the term "operational evaluation level" in today's rule. The evaluation and report components remain the same as those outlined in the proposed rule for significant excursions. However, the scope of the evaluation and report components of the operational evaluation has also been modified from the proposed significant excursion evaluation components based on public comments.

In the Stage 2 DBPR proposal, States were to define criteria to identify significant excursions rather than using criteria defined by EPA. Concurrent with the Stage 2 DBPR proposal, EPA issued draft guidance (USEPA 2003e) for systems and States that described how to determine whether a significant excursion has occurred, using several different options. The rule proposal specifically requested public comment on the definition of a significant excursion, whether it should be defined by the State or nationally, and the scope of the evaluation.

After reviewing comments on the Stage 2 DBPR proposal, EPA determined that DBP levels initiating an operational evaluation should be defined in the regulation to ensure national consistency. Systems were concerned with the evaluation requirements being initiated based on criteria that might not be consistent nationally. Also, many States believed the requirement for States to define criteria to initiate an evaluation would be difficult for States to implement.

Under today's rule, EPA is defining operational evaluation levels with an algorithm based on Stage 2 DBPR compliance monitoring results. These operational evaluation levels will act as an early warning for a possible MCL violation in the following quarter. This early warning is accomplished because the operational evaluation requirement is initiated when the system assumes that the current quarter's result is repeated and this will result in an MCL violation. This early identification allows the system to act to prevent the violation.

Today's rule also modifies the scope of an operational evaluation. EPA has concluded that the source of DBP levels

that would initiate an operational evaluation can potentially be linked to a number of factors that extend beyond distribution system operations. Therefore, EPA believes that evaluations must include a consideration of treatment plant and other system operations rather than limiting the operational evaluation to only the distribution system, as proposed. Because the source of the problem could be associated with operations in any of these system components (or more than one), an evaluation that provides systems with valuable information to evaluate possible modifications to current operational practices (e.g. water age management, source blending) or in planning system modifications or improvements (e.g. disinfection practices, tank modifications, distribution looping) will reduce DBP levels initiating an operational evaluation. EPA also believes that State review of operational evaluation reports is valuable for both States and systems in their interactions, particularly when systems may be in discussions with or requesting approvals from the State for system improvements. Timely reviews of operational evaluation reports will be valuable for States in reviewing other compliance submittals and will be particularly valuable in reviewing and approving any proposed source, treatment or distribution system modifications for a water system. Under today's rule, systems must submit a written report of the operational evaluation to the State no later than 90 days after being notified of the DBP analytical result initiating an operational evaluation. The written operational evaluation report must also be made available to the public upon request.

3. Summary of Major Comments

EPA received comments both in favor of and opposed to the proposed evaluation requirements. While some commenters felt that the evaluation requirements should not be a part of the Stage 2 DBPR until there was more information regarding potential health effects correlated to specific DBP levels, other commenters felt that the existing health effects data were sufficient to warrant strengthening the proposed requirements for an evaluation. Today's final rule requirements are consistent with the Agreement in Principle recommendations.

Some commenters noted that health effects research on DBPs is insufficient to identify a level at which health effects occur and were concerned that the proposed significant excursion requirements placed an emphasis on DBP levels that might not be warranted rather than on system operational issues and compliance with Stage 2 DBPR MCLs.

Basis. The proposed requirements for significant excursion evaluations were not based upon health effects, but rather were intended to be an indicator of operational performance. To address commenter's concerns and to emphasize what EPA believes should initiate a comprehensive evaluation of system operations that may result in elevated DBP levels and provide a proactive procedure to address compliance with Stage 2 DBP LRAA MCLs , EPA has replaced the term "significant excursion" used in the Stage 2 DBPR proposal with the term "operational evaluation level" in today's rule.

Definition of the operational evaluation levels. The majority of commenters stated that EPA should define the DBP levels initiating an operational evaluation ("significant excursion" in the proposal) in the regulation to ensure national consistency rather than requiring States to develop their own criteria (as was proposed). Commenters suggested several definitions, including a single numerical limit and calculations comparing previous quarterly DBP results to the current quarter's result. Commenters that recommended a single numerical limit felt that such an approach was justified by the available health effects information, while other commenters felt available heath effects information did not support a single numerical limit. Commenters recommended that any definition be easy to understand and implement.

EPA agrees with commenter preference for national criteria to initiate an operational evaluation. The DBP levels initiating an operational evaluation in today's rule consider routine operational variations in distribution systems, are simple for water systems to calculate, and minimize the implementation burden on States. They also provide an early warning to help identify possible future MCL violations and allow the system to take proactive steps to remain in compliance. EPA emphasizes, as it did in the proposal and elsewhere in this notice, that health effects research is insufficient to identify a level at which health effects occur, and thus today's methodology for initiating operational evaluation is not based upon health effects, but rather is intended as an indicator of operational performance.

Scope of an evaluation. Some commenters felt that the scope of an evaluation initiated by locational DBP levels should be limited to the distribution systems, as in the proposal. Others felt that the treatment processes should be included in the evaluation, noting that these can be significant in the formation of DBPs.

The Agency agrees with commenters that treatment processes can be a significant factor in DBP levels initiating an operational evaluation and that a comprehensive operational evaluation should address treatment processes. In cases where the system can clearly identify the cause of the DBP levels initiating an operational evaluation (based on factors such as water quality data, plant performance data, distribution system configuration, and previous evaluations) the State may allow the system to limit the scope of the evaluation to the identified cause. In other cases, it is appropriate to evaluate the entire system, from source through treatment to distribution system configuration and operational practices.

Timing for completion and review of the evaluation report. While some commenters agreed that the evaluation report should be reviewed as part of the sanitary survey process (as proposed), many commenters felt that the time between sanitary surveys (up to five years) minimized the value of the evaluation report in identifying both the causes of DBP levels initiating an operational evaluation and in possible changes to prevent recurrence. Moreover, a number of commenters felt that the evaluation report was important enough to warrant a separate submittal and State review rather than have the evaluation report compete with other priorities during a sanitary survey.

The Agency agrees that completion and State review of evaluation reports on a three or five year sanitary survey cycle, when the focus of the evaluation is on what may happen in the next quarter, would allow for an unreasonable period of time to pass between the event initiating the operational evaluation and completion and State review of the report. This would diminish the value of the evaluation report for both systems and States, particularly when systems may be in discussions with or requesting approval for treatment changes from States, and as noted above, the focus of the report is on what may occur in the next quarter. EPA believes that timely reviews of evaluation reports by States is important, would be essential for States in understanding system operations and reviewing other compliance submittals, and would be extremely valuable in reviewing and approving any proposed source, treatment or distribution system modifications for a water system.

Having the evaluation information on an ongoing basis rather than a delayed basis would also allow States to prioritize their resources in scheduling and reviewing particular water system operations and conditions as part of any on-site system review or oversight. Therefore, today's rule requires that systems complete the operational evaluation and submit the evaluation report to the State within 90 days of the occurrence.

I. MCL, BAT, and Monitoring for Bromate

1. Today's Rule

Today EPA is confirming that the MCL for bromate for systems using ozone remains at 0.010 mg/L as an RAA for samples taken at the entrance to the distribution system as established by the Stage 1 DBPR. Because the MCL remains the same, EPA is not modifying the existing bromate BAT. EPA is changing the criterion for a system using ozone to qualify for reduced bromate monitoring from demonstrating low levels of bromide to demonstrating low levels of bromate.

2. Background and Analysis

a. Bromate MCL. Bromate is a principal byproduct from ozonation of bromide-containing source waters. As described in more detail in the Stage 2 DBPR proposal (USEPA 2003a), more stringent bromate MCL has the potential to decrease current levels of microbial protection, impair the ability of systems to control resistant pathogens like Cryptosporidium, and increase levels of DBPs from other disinfectants that may be used instead of ozone. EPA considered reducing the bromate MCL from 0.010 mg/L to 0.005 mg/L as an annual average but concluded that many systems using ozone to inactivate microbial pathogens would have significant difficulty maintaining bromate levels at or below 0.005 mg/L. In addition, because of the high-doses required, the ability of systems to use ozone to meet Cryptosporidium treatment requirements under the LT2ESWTR would be diminished if the bromate MCL was decreased from 0.010 to 0.005 mg/L; higher doses will generally lead to greater bromate formation. After evaluation under the risk-balancing provisions of section 1412(b)(5) of the SDWA, EPA concluded that the existing MCL was justified. EPA will review the bromate MCL as part of the six-year review process and determine whether the MCL should remain at 0.010 mg/L or be reduced to a lower level. As a part of that review, EPA will consider the increased utilization of alternative technologies, such as UV, and whether the risk/risk concerns reflected in today's rule, as well as in the LT2ESWTR, remain valid.

b. Criterion for reduced bromate monitoring. Because more sensitive bromate methods are now available, EPA is requiring a new criterion for reduced bromate monitoring. In the Stage 1 DBPR, EPA required ozone systems to demonstrate that source water bromide levels, as a running annual average, did not exceed 0.05 mg/L. EPA elected to use bromide as a surrogate for bromate in determining eligibility for reduced monitoring because the available analytical method for bromate was not sensitive enough to quantify levels well below the bromate MCL of 0.010 mg/L.

EPA approved several new analytical methods for bromate that are far more sensitive than the existing method as part of today's rule. Since these methods can measure bromate to levels of 0.001 mg/L or lower, EPA is replacing the criterion for reduced bromate monitoring (source water bromide running annual average not to exceed 0.05 mg/L) with a bromate running annual average not to exceed 0.0025 mg/L.

In the past, EPA has often set the criterion for reduced monitoring eligibility at 50% of the MCL, which would be 0.005 mg/L. However, the MCL for bromate will remain at 0.010 mg/L, representing a risk level of $2\times10/b\ 2\times10^{-4}$, 10^{-4} and 10^{-6} (higher than EPA's usual excess cancer risk range of 10^{-4} to 10^{-6}) because of risk tradeoff considerations) (USEPA 2003a).

EPA believes that the decision for reduced monitoring is separate from these risk tradeoff considerations. Risk tradeoff considerations influence the selection of the MCL, while reduced monitoring requirements are designed to ensure that the MCL, once established, is reliably and consistently achieved. Requiring a running annual average of 0.0025 mg/L for the reduced monitoring criterion allows greater confidence that the system is achieving the MCL and thus ensuring public health protection.

3. Summary of Major Comments

Commenters supported both the retention of the existing bromate MCL and the modified reduced monitoring criterion.

J. Public Notice Requirements

1. Today's Rule

Today's rule does not alter existing public notification language for TTHM, HAA5 or TOC, which are listed under 40 CFR 141.201–141.210 (Subpart Q).

2. Background and Analysis

EPA requested comment on including language in the proposed rule concerning potential reproductive and developmental health effects. EPA believes this is an important issue because of the large population exposed (58 million women of child-bearing age; USEPA 2005a) and the number of studies that, while not conclusive, point towards a potential risk concern. While EPA is not including information about reproductive and developmental health effects in public notices at this time, the Agency plans to reconsider whether to include this information in the future. As part of this effort, EPA intends to support research to assess communication strategies on how to best provide this information.

The responsibilities for public notification and consumer confidence reports rest with the individual system. Under the Public Notice Rule (Part 141 subpart Q) and Consumer Confidence Report Rule (Part 141 subpart O), the wholesale system is responsible for notifying the consecutive system of analytical results and violations related to monitoring conducted by the wholesale system. Consecutive systems are required to conduct appropriate public notification after a violation (whether in the wholesale system or the consecutive system). In their consumer confidence report, consecutive systems must include results of the testing conducted by the wholesale system unless the consecutive system conducted equivalent testing (as required in today's rule) that indicated the consecutive system was in compliance, in which case the consecutive system reports its own compliance monitoring results.

3. Summary of Major Comments

EPA requested and received many comments on the topic of including public notification language regarding potential reproductive and developmental effects. A number of comments called for including reproductive and developmental health effects language to address the potential health concerns that research has shown. Numerous comments also opposed such language due to uncertainties in the underlying science and the implications such language could have on public trust of utilities.

EPA agrees on the importance of addressing possible reproductive and developmental health risks. However, given the uncertainties in the science and our lack of knowledge of how to best communicate undefined risks, a general statement about reproductive

and developmental health effects is premature at this time. The Agency needs to understand how best to characterize and communicate these risks and what to do to follow up any such communication. The public deserves accurate, timely, relevant, and understandable communication. The Agency will continue to follow up on this issue with additional research, possibly including a project to work with stakeholders to assess risk communication strategies.

Some comments also suggested leaving the choice of language up to the water server. EPA believes that this strategy would cause undue confusion to both the PWS and the public.

Commenters generally agreed that both wholesale and consecutive systems that conduct monitoring be required to report their own analytical results as part of their CCRs. One commenter requested clarification of consecutive system public notification requirements when there is a violation in the wholesale system but the consecutive system data indicate that it meets DBP MCLs.

Although EPA requires consecutive systems to conduct appropriate public notification of violations (whether in the wholesale or consecutive system), there may be cases where the violation may only affect an isolated portion of the distribution system. Under the public notification rule, the State may allow systems to limit distribution of the notice to the area that is out of compliance if the system can demonstrate that the violation occurred in a part of the distribution system that is "physically or hydraulically isolated from other parts of the distribution system." This provision remains in place. As for a consecutive system whose wholesale system is in violation, the consecutive system is not required to conduct public notification if DBP levels in the consecutive system are in compliance.

K. Variances and Exemptions

1. Today's Rule

States may grant variances in accordance with sections 1415(a) and 1415(e) of the SDWA and EPA's regulations. States may grant exemptions in accordance with section 1416(a) of the SDWA and EPA's regulations.

2. Background and Analysis

a. Variances. The SDWA provides for two types of variances—general variances and small system variances. Under section 1415(a)(1)(A) of the SDWA, a State that has primary enforcement responsibility (primacy), or EPA as the primacy agency, may grant general variances from MCLs to those public water systems of any size that cannot comply with the MCLs because of characteristics of the raw water sources. The primacy agency may grant general variances to a system on condition that the system install the best technology, treatment techniques, or other means that EPA finds available and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. At the time this type of variance is granted, the State must prescribe a compliance schedule and may require the system to implement additional control measures. Furthermore, before EPA or the State may grant a general variance, it must find that the variance will not result in an unreasonable risk to health (URTH) to the public served by the public water system. In today's final rule, EPA is specifying BATs for general variances under section 1415(a) (see section IV.D).

Section 1415(e) authorizes the primacy agency to issue variances to small public water systems (those serving fewer than 10,000 people) where the primacy agent determines (1) that the system cannot afford to comply with an MCL or treatment technique and (2) that the terms of the variances will ensure adequate protection of human health (63 FR 43833, August 14, 1998) (USEPA 1998c). These variances may only be granted where EPA has determined that there is no affordable compliance technology and has identified a small system variance technology under section 1412(b)(15) for the contaminant, system size and source water quality in question. As discussed below, small system variances under section 1415(e) are not available because EPA has determined that affordable compliance technologies are available.

The 1996 Amendments to the SDWA identify three categories of small public water systems that need to be addressed: (1) Those serving a population of 3301–10,000; (2) those serving a population of 500–3300; and (3) those serving a population of 25–499. The SDWA requires EPA to make determinations of available compliance technologies for each size category. A compliance technology is a technology that is affordable and that achieves compliance with the MCL and/or treatment technique. Compliance technologies can include point-of-entry or point-of-use treatment units. Variance technologies are only specified for those system size/source water quality combinations for which there are no listed affordable compliance technologies.

Using its current National Affordability Criteria, EPA has determined that multiple affordable compliance technologies are available for each of the three system sizes (USEPA 2005a), and therefore did not identify any variance treatment technologies. The analysis was consistent with the current methodology used in the document "National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act" (USEPA 1998d) and the "Variance Technology Findings for Contaminants Regulated Before 1996" (USEPA 1998e). However, EPA is currently reevaluating its national-level affordability criteria and has solicited recommendations from both the NDWAC and the SAB as part of this review. EPA intends to apply the revised criteria to the Stage 2 DBPR once they have been finalized for the purpose of determining whether to enable States to give variances. Thus, while the analysis of Stage 2 household costs will not change, EPA's determination regarding the availability of affordable compliance technologies for the different categories of small systems may.

b. Affordable Treatment Technologies for Small Systems. The treatment trains considered and predicted to be used in EPA's compliance forecast for systems serving under 10,000 people, are listed in Table IV.K–1.

TABLE IV.K–1.—TECHNOLOGIES CONSIDERED AND PREDICTED TO BE USED IN COMPLIANCE FORECAST FOR SMALL SYSTEMS

SW Water Plants	GW Water Plants
• Switching to chloramines as a residual disinfectant	• Switching to chloramines as a residual disinfectant
• Chlorine dioxide (not for systems serving fewer than 100 people)	• UV
• UV	• Ozone (not for systems serving fewer than 100 people)
• Ozone (not for systems serving fewer than 100 people)	• GAC20
• Micro-filtration/Ultra-filtration	• Nanofiltration

TABLE IV.K–1.—TECHNOLOGIES CONSIDERED AND PREDICTED TO BE USED IN COMPLIANCE FORECAST FOR SMALL SYSTEMS—Continued

SW Water Plants	GW Water Plants
• GAC20. • GAC20 + Advanced disinfectants. • Integrated Membranes.	

Note: Italicized technologies are those predicted to be used in the compliance forecast.
Source: Exhibits 5.11b and 5.14b, USEPA 2005a.

The household costs for these technologies were compared against the EPA's current national-level affordability criteria to determine the affordable treatment technologies. The Agency's national level affordability criteria were published in the August 6, 1998 **Federal Register** (USEPA 1998d). A complete description of how this analysis was applied to Stage 2 DBPR is given in Section 8.3 of the Economic Analysis (USEPA 2005a).

Of the technologies listed in Table IV.K–1, integrated membranes with chloramines, GAC20 with advanced oxidants, and ozone are above the affordability threshold in the 0 to 500 category. No treatment technologies are above the affordability threshold in the 500 to 3,300 category or the 3,300 to 10,000 category. As shown in the Economic Analysis for systems serving fewer than 500 people, 14 systems are predicted to use GAC20 with advanced disinfectants, one system is predicted to use integrated membranes, and no systems are predicted to use ozone to comply with the Stage 2 DBPR (USEPA 2005a). However, several alternate technologies are affordable and likely available to these systems. In some cases, the compliance data for these systems under the Stage 2 DBPR will be the same as under the Stage 1 DBPR (because many systems serving fewer than 500 people will have the same single sampling site under both rules); these systems will have already installed the necessary compliance technology to comply with the Stage 1 DBPR. It is also possible that less costly technologies such as those for which percentage use caps were set in the decision tree may actually be used to achieve compliance (e.g., chloramines, UV). Thus, EPA believes that compliance by these systems will be affordable.

As shown in Table IV.K–2, the cost model predicts that some households served by very small systems will experience household cost increases greater than the available expenditure margins as a result of adding advanced technology for the Stage 2 DBPR (USEPA 2005a). This prediction may be overestimated because small systems may have other compliance alternatives available to them besides adding treatment, which were not considered in the model. For example, some of these systems currently may be operated on a part-time basis; therefore, they may be able to modify the current operational schedule or use excessive capacity to avoid installing a costly technology to comply with the Stage 2 DBPR. The system also may identify another water source that has lower TTHM and HAA5 precursor levels. Systems that can identify such an alternate water source may not have to treat that new source water as intensely as their current source, resulting in lower treatment costs. Systems may elect to connect to a neighboring water system. While connecting to another system may not be feasible for some remote systems, EPA estimates that more than 22 percent of all small water systems are located within metropolitan regions (USEPA 2000f) where distances between neighboring systems will not present a prohibitive barrier. Low-cost alternatives to reduce total trihalomethanes (TTHM) and haloacetic acid (HAA5) levels also include distribution system modifications such as flushing distribution mains more frequently, looping to prevent dead ends, and optimizing storage to minimize retention time. More discussion of household cost increases is presented in Section VI.E and the Economic Analysis (USEPA 2005a).

TABLE IV.K–2.—DISTRIBUTION OF HOUSEHOLD UNIT TREATMENT COSTS FOR PLANTS ADDING TREATMENT

Systems size (population seved)	Number of households served by plants adding treatment (Percent of all households subject to the Stage 2 DBPR)	Mean annual household cost increase	Median annual household cost increase	90th Percentile annual household cost increase	95th Percentile annual household cost increase	Available expenditure margin ($/hh/yr)	Number of households with annual cost increases greater than the available expenditure margin	Number of surface water plants with annual cost increases greater than the available expenditure margin	Number of groundwater plants with annual cost increases greater than the available expenditure margin	Total number of plants with annual cost increases greater than the available expenditure margin
	A	B	C	D	E	F	G	H	I	J = H + I
0–500	43045(3)	$201.55	$299.01	$299.01	$414.74	$733	964	15	0	15
501–3,300	205842 (4)	$58.41	$29.96	$75.09	$366.53	$724	0	9	0	0
3,301–10,000	342525 (5)	$37.05	$14.59	$55.25	$200.05	$750	0	0	0	0

Notes: Household unit costs represent treatment costs only. All values in year 2003 dollars.
Source: Exhibit 8.4c, USEPA 2005a.

c. Exemptions. Under section 1416(a), EPA or a State that has primary enforcement responsibility (primacy) may exempt a public water system from any requirements related to an MCL or treatment technique of an NPDWR, if it finds that (1) due to compelling factors (which may include economic factors such as qualification of the PWS as serving a disadvantaged community), the PWS is unable to comply with the requirement or implement measures to develop an alternative source of water supply; (2) the exemption will not result in an unreasonable risk to health; and; (3) the PWS was in operation on the effective date of the NPDWR, or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and (4) management or restructuring changes (or both) cannot reasonably result in compliance with the Act or improve the quality of

drinking water. If EPA or the State grants an exemption to a public water system, it must at the same time prescribe a schedule for compliance (including increments of progress or measures to develop an alternative source of water supply) and implementation of appropriate control measures that the State requires the system to meet while the exemption is in effect. Under section 1416(b)(2)(A), the schedule prescribed shall require compliance as expeditiously as practicable (to be determined by the State), but no later than 3 years after the effective date for the regulations established pursuant to section 1412(b)(10). For public water systems which do not serve more than a population of 3,300 and which need financial assistance for the necessary improvements, EPA or the State may renew an exemption for one or more additional two-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements above. A public water system shall not be granted an exemption unless it can establish that either: (1) the system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to section 1412(b)(10); (2) in the case of a system that needs financial assistance for the necessary implementation, the system has entered into an agreement to obtain financial assistance pursuant to section 1452 or any other Federal or state program; or (3) the system has entered into an enforceable agreement to become part of a regional public water system.

3. Summary of Major Comments

Several commenters agreed with the proposal not to list variances technologies for the Stage 2 DBPR. One commenter requested that EPA modify the methodology used to assess affordability. As mentioned earlier, EPA is currently reevaluating its national-level affordability criteria and has solicited recommendations from both the NDWAC and the SAB as part of this review. EPA intends to apply the revised criteria to the Stage 2 DBPR for the purpose of determining whether to enable States to give variances.

L. Requirements for Systems to Use Qualified Operators

EPA believes that systems that must make treatment changes to comply with requirements to reduce microbiological risks and risks from disinfectants and disinfection byproducts should be operated by personnel who are qualified to recognize and respond to problems. Subpart H systems were required to be operated by qualified operators under the SWTR (§ 141.70). The Stage 1 DBPR added requirements for all disinfected systems to be operated by qualified personnel who meet the requirements specified by the State, which may differ based on system size and type. The rule also requires that States maintain a register of qualified operators (40 CFR 141.130(c)). While the Stage 2 DBPR requirements do not supercede or modify the requirement that disinfected systems be operated by qualified operators, such personnel play an important role in delivering drinking water that meets Stage 2 MCLs to the public. States should also review and modify, as required, their qualification standards to take into account new technologies (e.g., ultraviolet (UV) disinfection) and new compliance requirements (including simultaneous compliance and consecutive system requirements). EPA received only one comment on this topic; the commenter supported the need for a qualified operator.

M. System Reporting and Recordkeeping Requirements

1. Today's Rule

Today's Stage 2 DBPR, consistent with the existing system reporting and recordkeeping regulations under 40 CFR 141.134 (Stage 1 DBPR), requires public water systems (including consecutive systems) to report monitoring data to States within ten days after the end of the compliance period. In addition, systems are required to submit the data required in § 141.134. These data are required to be submitted quarterly for any monitoring conducted quarterly or more frequently, and within ten days of the end of the monitoring period for less frequent monitoring. As with other chemical analysis data, the system must keep the results for 10 years.

In addition to the existing Stage 1 reporting requirements, today's rule requires systems to perform specific IDSE-related reporting to the primacy agency, except for systems serving fewer than 500 for which the State or primacy agency has waived this requirement. Required reporting includes submission of IDSE monitoring plans, 40/30 certification, and IDSE reports. This reporting must be accomplished on the schedule specified in the rule (see § 141.600(c)) and discussed in section IV.E of today's preamble. System submissions must include the elements identified in subpart U and discussed further in section IV.F of today's preamble. These elements include recommended Stage 2 compliance monitoring sites as part of the IDSE report.

Systems must report compliance with Stage 2 TTHM and HAA5 MCLs (0.080 mg/LTTHM and 0.060 mg/L HAA5, as LRAAs) according to the schedules specified in §§ 141.620 and 141.629 and discussed in section IV.E of today's preamble. Reporting for DBP monitoring, as described previously, will remain generally consistent with current public water system reporting requirements (§ 141.31 and § 141.134); systems will be required to calculate and report each LRAA (instead of the system's RAA) and each individual monitoring result (as required under the Stage 1 DBPR). Systems will also be required to provide a report to the State about each operational evaluation within 90 days, as discussed in section IV.H. Reports and evaluations must be kept for 10 years and may prove valuable in identifying trends and recurring issues.

2. Summary of Major Comments

EPA requested comment on all system reporting and recordkeeping requirements. Commenters generally supported EPA's proposed requirements, but expressed concern about two specific issues. The first issue was the data management and tracking difficulties that States would face if EPA finalized a monitoring approach which had both plant-based and population-based requirements, as was proposed. Since today's rule contains only population-based monitoring requirements, this concern is no longer an issue. See section IV.G in today's preamble for further discussion.

The second concern related to reporting associated with the IDSE. Commenters who supported an approach other than the IDSE for determining Stage 2 compliance monitoring locations did not support IDSE-related reporting. The IDSE remains a key component of the final rule; thus, EPA has retained IDSE-related reporting. However, the Agency has modified both the content and the timing of the reporting to reduce the burden. See sections IV.F and IV.E, respectively, of today's preamble for further discussion.

N. Approval of Additional Analytical Methods

1. Today's Rule

EPA is taking final action to:

(1) allow the use of 13 methods published by the Standard Methods Committee in Standard Methods for the Examination of Water and Wastewater,

20th edition, 1998 (APHA 1998) and 12 methods in Standard Methods Online.

(2) approve three methods published by American Society for Testing and Materials International.

(3) approve EPA Method 327.0 Revision 1.1 (USEPA 2005h) for daily monitoring of chlorine dioxide and chlorite, EPA Method 552.3 (USEPA 2003f) for haloacetic acids (five) (HAA5), EPA Methods 317.0 Revision 2 (USEPA 2001c) and 326.0 (USEPA 2002) for bromate, chlorite, and bromide, EPA Method 321.8 (USEPA 2000g) for bromate only, and EPA Method 415.3 Revision 1.1 (USEPA 2005l) for total organic carbon (TOC) and specific ultraviolet absorbance (SUVA).

(4) update the citation for EPA Method 300.1 (USEPA 2000h) for bromate, chlorite, and bromide.

(5) standardize the HAA5 sample holding times and the bromate sample preservation procedure and holding time.

(6) add the requirement to remove inorganic carbon prior to determining TOC or DOC, remove the specification of type of acid used for TOC/DOC sample preservation; and require that TOC samples be preserved at the time of collection.

(7) clarify which methods are approved for magnesium hardness determinations (40 CFR 141.131 and 141.135).

2. Background and Analysis

The Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) was promulgated on December 16, 1998 (USEPA 1998a) and it included approved analytical methods for DBPs, disinfectants, and DBP precursors. Additional analytical methods became available subsequent to the rule and were proposed in the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) (USEPA 2003a). These methods are applicable to monitoring that is required under the Stage 1 DBPR. After the Stage 2 DBPR proposal, analytical methods for additional drinking water contaminants were proposed for approval in a Methods Update Rule proposal (USEPA 2004). The Stage 2 DBPR and Methods Update Rule proposals both included changes in the same sections of the CFR. EPA decided to make all the changes to § 141.131 as part of the Stage 2 DBPR and the remainder of the methods that were proposed with the Stage 2 DBPR will be considered as part of the Methods Update Rule, which will be finalized at a later date. Two ASTM methods, D 1253–86(96) and D 1253–03, that were proposed in the Methods Update Rule, are being approved for measuring chlorine residual as part of today's action.

Minor corrections have been made in two of the methods that were proposed in the Stage 2 DBPR. In today's rule, the Agency is approving EPA Method 327.0 (Revision 1.1, 2005) which corrects three typographical errors in the proposed method.

EPA is also approving EPA Method 415.3 (Revision 1.1, 2005), which does not contain the requirement that samples for the analysis of TOC must be received within 48 hours of sample collection.

A summary of the methods that are included in today's rule is presented in Table IV.N–1.

TABLE IV.N–1. ANALYTICAL METHODS APPROVED IN TODAY'S RULE

Analyte	EPA method	Standard methods 20th edition	Standard methods online	Other
§ 141.131—Disinfection Byproducts				
HAA5	552.3	6251 B	6251 B–94	
Bromate	317.0, Revision 2.0			ASTM D 6581–00
	321.8			
	326.0			
Chlorite (monthly or daily)	317.0, Revision 2.0			ASTM D 6581–00
	326.0			
Chlorite (daily)	327.0, Revision 1.1	4500–ClO_2 E	4500–ClO_2 E–00	
§ 141.131—Disinfectants				
Chlorine (free, combined, total).		4500–Cl D	4500–Cl D–00	ASTM D 1253–86(96)
		4500–Cl F	4500–Cl F–00	ASTM D 1253–03
		4500–Cl G	4500–Cl G–00	
Chlorine (total)		4500–Cl E	4500–Cl E–00	
		4500–Cl I	4500–Cl I–00	
Chlorine (free)		4500–Cl H	4500–Cl H–00	
Chlorine Dioxide	327.0, Revision 1.1	4500–ClO_2 D	4500–ClO_2 E–00	
		4500–ClO_2 E		
§ 141.131—Other parameters				
Bromide	317.0, Revision 2.0			ASTM D 6581–00
	326.0			
TOC/DOC	415.3, Revision 1.1	5310 B	5310 B–00	
		5310 C	5310 C–00	
		5310 D	5310 D–00	
UV_{254}	415.3, Revision 1.1	5910 B	5910 B–00	
SUVA	415.3, Revision 1.1			

O. Laboratory Certification and Approval

1. PE Acceptance Criteria

a. Today's rule. Today's rule maintains the requirements of laboratory certification for laboratories performing analyses to demonstrate compliance with MCLs and all other analyses to be conducted by approved parties. It revises the acceptance criteria for performance evaluation (PE) studies which laboratories must pass as part of the certification program. The new acceptance limits are effective 60 days after promulgation. Laboratories that were certified under the Stage 1 DBPR PE acceptance criteria will be subject to the new criteria when it is time for them to analyze their annual DBP PE sample(s). Today's rule also requires that TTHM and HAA5 analyses that are performed for the IDSE or system-specific study be conducted by laboratories certified for those analyses.

TABLE IV.O–1.—PERFORMANCE EVALUATION (PE) ACCEPTANCE CRITERIA

DBP	Acceptance limits (percent of true value)	Comments
TTHM		
Chloroform	±20	Laboratory must meet all 4 individual THM acceptance limits in order to successfully pass a PE sample for TTHM
Bromodichloromethane	±20	
Dibromochloromethane	±20	
Bromoform	±20	
HAA5		
Monochloroacetic Acid	±40	Laboratory must meet the acceptance limits for 4 out of 5 of the HAA5 compounds in order to successfully pass a PE sample for HAA5
Dichloroacetic Acid	±40	
Trichloroacetic Acid	±40	
Monobromoacetic Acid	±40	
Dibromoacetic Acid	±40	
Chlorite	±30	
Bromate	±30	

b. Background and analysis. The Stage 1 DBPR (USEPA 1998a) specified that in order to be certified the laboratory must pass an annual performance evaluation (PE) sample approved by EPA or the State using each method for which the laboratory wishes to maintain certification. The acceptance criteria for the DBP PE samples were set as statistical limits based on the performance of the laboratories in each study. This was done because EPA did not have enough data to specify fixed acceptance limits.

Subsequent to promulgation of the Stage 1 DBPR, EPA was able to evaluate data from PE studies conducted during the Information Collection Rule (USEPA 1996) and during the last five general Water Supply PE studies. Based on the evaluation process as described in the proposed Stage 2 DBPR (USEPA 2003a), EPA determined that fixed acceptance limits could be established for the DBPs. Today's action replaces the statistical PE acceptance limits with fixed limits effective one year after promulgation.

c. Summary of major comments. Four commenters supported the fixed acceptance criteria as presented in the proposed rule. One requested that a minimum concentration be set for each DBP in the PE studies, so that laboratories would not be required to meet tighter criteria in the PE study than they are required to meet with the minimum reporting level (MRL) check standard. EPA has addressed this concern by directing the PE sample suppliers to use concentrations no less than 10 µg/L for the individual THM and HAAs, 100 µg/L for chlorite, and 7 µg/L for bromate in PE studies used for certifying drinking water laboratories.

Two commenters requested that the effective date for the new PE acceptance criteria be extended from 60 days to 180 days, because they felt that 60 days was not enough time for laboratories to meet the new criteria. EPA realized from those comments that the original intent of the proposal was not clearly explained; the 60 days was to be the deadline for when the PE providers must change the acceptance criteria that are used when the studies are conducted. Laboratories would have to meet the criteria when it is time for them to analyze their annual PE samples in order to maintain certification. Depending upon when the last PE sample was analyzed, laboratories could have up to one year to meet the new criteria. In order to eliminate this confusion, EPA has modified the rule language to allow laboratories one year from today's date to meet the new PE criteria.

2. Minimum Reporting Limits

a. Today's rule. EPA is establishing regulatory minimum reporting limits (MRLs) for compliance reporting of DBPs by Public Water Systems. These regulatory MRLs (Table IV.O–2) also define the minimum concentrations that must be reported as part of the Consumer Confidence Reports (40 CFR § 141.151(d)). EPA is incorporating MRLs into the laboratory certification program for DBPs by requiring laboratories to include a standard near the MRL concentration as part of the calibration curve for each DBP and to verify the accuracy of the calibration curve at the MRL concentration by analyzing an MRL check standard with a concentration less than or equal to 110% of the MRL with each batch of samples. The measured DBP concentration for the MRL check standard must be ±50% of the expected value, if any field sample in the batch has a concentration less than 5 times the regulatory MRL.

TABLE IV.O–2.—REGULATORY MINIMUM REPORTING LEVELS

DBP	Minimum reporting level (mg/L) [1]	Comments
TTHM [2]		
Chloroform	0.0010	
Bromodichloromethane	0.0010	
Dibromochloromethane	0.0010	
Bromoform	0.0010	
HAA5 [2]		
Monochloroacetic Acid	0.0020	
Dichloroacetic Acid	0.0010	
Trichloroacetic Acid	0.0010	
Monobromoacetic Acid	0.0010	
Dibromoacetic Acid	0.0010	
Chlorite	0.020	Applicable to monitoring as prescribed in § 141.132(b)(2)(i)(B) and (b)(2)(ii).
Bromate	0.0050 or 0.0010	Laboratories that use EPA Methods 317.0 Revision 2.0, 326.0 or 321.8 must meet a 0.0010 mg/L MRL for bromate.

[1] The calibration curve must encompass the regulatory minimum reporting level (MRL) concentration. Data may be reported for concentrations lower than the regulatory MRL as long as the precision and accuracy criteria are met by analyzing an MRL check standard at the lowest reporting limit chosen by the laboratory. The laboratory must verify the accuracy of the calibration curve at the MRL concentration by analyzing an MRL check standard with a concentration less than or equal to 110% of the MRL with each batch of samples. The measured concentration for the MRL check standard must be ±50% of the expected value, if any field sample in the batch has a concentration less than 5 times the regulatory MRL. Method requirements to analyze higher concentration check standards and meet tighter acceptance criteria for them must be met in addition to the MRL check standard requirement.

[2] When adding the individual trihalomethane or haloacetic acid concentrations to calculate the TTHM or HAA5 concentrations, respectively, a zero is used for any analytical result that is less than the MRL concentration for that DBP, unless otherwise specified by the State.

b. Background and analysis. EPA proposed to establish regulatory MRLs for DBPs in order to define expectations for reporting compliance monitoring data to the Primacy Agencies and in the Consumer Confidence Reports. The proposed MRLs were generally based on those used during the Information Collection Rule (USEPA 1996), because an analysis of the quality control data set from the Information Collection Rule (Fair et al. 2002) indicated that laboratories are able to provide quantitative data down to those concentrations.

EPA also proposed that laboratories be required to demonstrate ability to quantitate at the MRL concentrations by analyzing an MRL check standard and meeting accuracy criteria on each day that compliance samples are analyzed. Three public commenters noted that meeting the accuracy requirement for the MRL check standard did not contribute to the quality of the data in cases in which the concentration of a DBP in the samples was much higher than the MRL. For example, if chloroform concentrations are always greater than 0.040 mg/L in a water system's samples, then verifying accurate quantitation at 0.0010 mg/L is unnecessary and may require the laboratory to dilute samples or maintain two calibration curves in order to comply with the requirement. EPA has taken this into consideration in today's rule and has adjusted the requirement accordingly. EPA is maintaining the requirement for all laboratories to analyze the MRL check standard, but the laboratory is only required to meet the accuracy criteria (±50%) if a field sample has a concentration less than five times the regulatory MRL concentration.

EPA proposed a regulatory MRL of 0.200 mg/L for chlorite, because data from the Information Collection Rule indicated that most samples would contain concentrations greater than 0.200 mg/L (USEPA 2003c). EPA also took comment on a lower MRL of 0.020 mg/L. Commenters were evenly divided concerning which regulatory MRL concentration should be adopted in the final rule. EPA has decided to set the chlorite regulatory MRL at 0.020 mg/L in today's rule. This decision was based on two factors. First, the approved analytical methods for determining compliance with the chlorite MCL can easily support an MRL of 0.020 mg/L. More importantly, since the proposal, EPA has learned that water systems that have low chlorite concentrations in their water have been obtaining data on these low concentrations from their laboratories and have been using these data in their Consumer Confidence Reports. Setting the MRL at 0.020 mg/L is reflective of current practices in laboratories and current data expectations by water systems.

c. Summary of major comments. There were no major comments.

P. Other Regulatory Changes

As part of today's action, EPA has included several "housekeeping" actions to remove sections of Part 141 that are no longer effective. These sections have been superceded by new requirements elsewhere in Part 141.

Sections 141.12 (Maximum contaminant levels for total trihalomethanes) and 141.30 (Total trihalomethanes sampling, analytical and other requirements) were promulgated as part of the 1979 TTHM Rule. These sections have been superceded in their entirety by § 141.64 (Maximum contaminant levels for disinfection byproducts) and subpart L (Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors), respectively, as of December 31, 2003. Also, § 141.32 (Public notification) has been superceded by subpart Q (Public Notification of Drinking Water Violations), which is now fully in effect.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing prior notice and an opportunity for public comment. In addition to updating methods, this rule also makes minor corrections to the National Primary Drinking Water Regulations, specifically the Public Notification tables (Subpart Q, Appendices A and B). Two final drinking water rules (66 FR 6976 and 65 FR 76708) inadvertently added new endnotes to two existing tables using the same endnote numbers. This rule corrects this technical drafting error by

renumbering the endnote citations in these two tables. Thus, additional notice and public comment is not necessary. EPA finds that this constitutes "good cause" under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making this rule change effective upon publication. 5 U.S.C. 553(d)(3).

V. State Implementation

A. Today's Rule

This section describes the regulations and other procedures and policies States must adopt to implement today's rule. States must continue to meet all other conditions of primacy in 40 CFR Part 142. To implement the Stage 2 DBPR, States must adopt revisions to the following:

- —§ 141.2—Definitions
- —§ 141.33—Record maintenance;
- —§ 141.64—Maximum contaminant levels for disinfection byproducts;
- —subpart L—Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors;
- —subpart O, Consumer Confidence Reports;
- —subpart Q, Public Notification of Drinking Water Violations;
- —new subpart U, Initial Distribution System Evaluation; and
- —new subpart V, Stage 2 Disinfection Byproducts Requirements.

1. State Primacy Requirements for Implementation Flexibility

In addition to adopting basic primacy requirements specified in 40 CFR part 142, States are required to address applicable special primacy conditions. Special primacy conditions pertain to specific regulations where implementation of the rule involves activities beyond general primacy provisions. The purpose of these special primacy requirements in today's rule is to ensure State flexibility in implementing a regulation that (1) applies to specific system configurations within the particular State and (2) can be integrated with a State's existing Public Water Supply Supervision Program. States must include these rule-distinct provisions in an application for approval or revision of their program. These primacy requirements for implementation flexibility are discussed in this section.

To ensure that a State program includes all the elements necessary for an effective and enforceable program under today's rule, a State primacy application must include a description of how the State will implement a procedure for modifying consecutive system and wholesale system monitoring requirements on a case-by-case basis, if a State will use the authority to modify monitoring requirements under this special primacy condition.

2. State Recordkeeping Requirements

Today's rule requires States to keep additional records of the following, including all supporting information and an explanation of the technical basis for each decision:

- —very small system waivers.
- —IDSE monitoring plans.
- —IDSE reports and 40/30 certifications, plus any modifications required by the State.
- —operational evaluations conducted by the system.

3. State Reporting Requirements

Today's rule has no new State reporting requirements.

4. Interim Primacy

States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits the application for this rule to USEPA, or the effective date of its revised regulations, whichever is later. A State that wishes to obtain interim primacy for future NPDWRs must obtain primacy for today's rule. As described in Section IV.F, EPA expects to work with States to oversee the individual distribution system evaluation process that begins shortly after rule promulgation.

5. IDSE Implementation

As discussed in section IV.E, many systems will be performing certain IDSE activities prior to their State receiving primacy. During that period, EPA will act as the primacy agency, but will consult and coordinate with individual States to the extent practicable and to the extent that States are willing and able to do so. In addition, prior to primacy, States may be asked to assist EPA in identifying and confirming systems that are required to comply with certain IDSE activities. Once the State has received primacy, it will become responsible for IDSE implementation activities.

B. Background and Analysis

SDWA establishes requirements that a State or eligible Indian Tribe must meet to assume and maintain primary enforcement responsibility (primacy) for its PWSs. These requirements include the following activities: (1) Adopting drinking water regulations that are no less stringent than Federal drinking water regulations; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available on activities that EPA requires by regulation; (4) issuing variances and exemptions (if allowed by the State), under conditions no less stringent than allowed under SDWA; and (5) adopting and being capable of implementing an adequate plan for the provisions of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision program as authorized under SDWA section 1413. In addition to adopting basic primacy requirements specified in 40 CFR Part 142, States may be required to adopt special primacy provisions pertaining to specific regulations where implementation of the rule involves activities beyond general primacy provisions. States must include these regulation specific provisions in an application for approval of their program revision.

The current regulations in 40 CFR 142.14 require States with primacy to keep various records, including the following: analytical results to determine compliance with MCLs, MRDLs, and treatment technique requirements; PWS inventories; State approvals; enforcement actions; and the issuance of variances and exemptions. Today's final rule requires States to keep additional records, including all supporting information and an explanation of the technical basis for decisions made by the State regarding today's rule requirements. The State may use these records to identify trends and determine whether to limit the scope of operational evaluations. EPA currently requires in 40 CFR 142.15 that States report to EPA information such as violations, variance and exemption status, and enforcement actions; today's rule does not add additional reporting requirements or modify existing requirements.

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 to incorporate the new process identified in the 1996 SDWA Amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review (63 FR 23362, April 28, 1998) (USEPA 1998f). The new process grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the

new or revised State regulation, whichever is later, and ends when EPA makes a final determination. However, this interim primacy authority is only available to a State that has primacy (including interim primacy) for every existing NPDWR in effect when the new regulation is promulgated. States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule and a State that wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule.

EPA is aware that due to the complicated wholesale system-consecutive system relationships that exist nationally, there will be cases where the standard monitoring framework will be difficult to implement. Therefore, States may develop, as a special primacy condition, a program under which the State can modify monitoring requirements for consecutive systems. These modifications must not undermine public health protection and all systems, including consecutive systems, must comply with the TTHM and HAA5 MCLs based on the LRAA at each compliance monitoring location. Each consecutive system must have at least one compliance monitoring location. However, such a program allows the State to establish monitoring requirements that account for complicated distribution system relationships, such as where neighboring systems buy from and sell to each other regularly throughout the year, water passes through multiple consecutive systems before it reaches a user, or a large group of interconnected systems have a complicated combined distribution system. EPA has developed a guidance manual to address these and other consecutive system issues.

C. Summary of Major Comments

Public comment generally supported the special primacy requirements in the August 11, 2003 proposal, and many commenters expressed appreciation for the flexibility the special primacy requirements provided to States.

Many commenters expressed concern about EPA as the implementer instead of the State, given the existing relationship between the State and system. EPA agrees that States perform an essential role in rule implementation and intends to work with States to the greatest extent possible, consistent with the rule schedule promulgated today. EPA believes that pre-promulgation coordination with States, changes in the final rule strongly supported by States (e.g., population-based monitoring instead of plant-based monitoring), and the staggered rule schedule will facilitate State involvement in pre-primacy implementation.

Many commenters also requested that the State have more flexibility to grant sampling waivers and exemptions. EPA believes that it has struck a reasonable balance among competing objectives in granting State flexibility. State flexibility comes at a resource cost and excessive system-by-system flexibility could overwhelm State resources. Also, EPA believes that much of the monitoring and water quality information a State would need to properly consider whether a waiver is appropriate is generally not available and, if available, difficult to evaluate.

VI. Economic Analysis

This section summarizes the Economic Analysis for the Final Stage 2 Disinfectants and Disinfection Byproducts Rule (Economic Analysis (EA)) (USEPA 2005a). The EA is an evaluation of the benefits and costs of today's final rule and other regulatory alternatives the Agency considered. Specifically, this evaluation addresses both quantified and non-quantified benefits to PWS consumers, including the general population and sensitive subpopulations. Costs are presented for PWSs, States, and consumer households. Also included is a discussion of potential risks from other contaminants, uncertainties in benefit and cost estimates, and a summary of major comments on the EA for the proposed Stage 2 DBPR.

EPA relied on data from several epidemiologic and toxicologic studies, the Information Collection Rule (ICR), and other sources, along with analytical models and input from technical experts, to understand DBP risk, occurrence, and PWS treatment changes that will result from today's rule. Benefits and costs are presented as annualized values using social discount rates of three and seven percent. The time frame used for benefit and cost comparisons is 25 years—approximately five years account for rule implementation and 20 years for the average useful life of treatment technologies.

EPA has prepared this EA to comply with the requirements of SDWA, including the Health Risk Reduction and Cost Analysis required by SDWA section 1412(b)(3)(C), and Executive Order 12866, Regulatory Planning and Review. The full EA is available in the docket for today's rule, which is available online as described in the **ADDRESSES** section. The full document provides detailed explanations of the analyses summarized in this section and additional analytical results.

A. Regulatory Alternatives Considered

The Stage 2 DBPR is the second in a set of rules that address public health risks from DBPs. EPA promulgated the Stage 1 DBPR to decrease average exposure to DBPs and mitigate associated health risks—compliance with TTHM and HAA5 MCLs is based on averaging concentrations across the distribution system. In developing the Stage 2 DBPR, EPA sought to identify and further reduce remaining risks from exposure to chlorinated DBPs.

The regulatory options EPA considered for the Stage 2 DBPR are the direct result of a consensus rulemaking process (Federal Advisory Committee Act (FACA) process) that involved various drinking water stakeholders (see Section III for a description of the FACA process). The Advisory Committee considered the following key questions during the negotiation process for the Stage 2 DBPR:

- What are the remaining health risks after implementation of the Stage 1 DBPR?
- What are approaches to addressing these risks?
- What are the risk tradeoffs that need to be considered in evaluating these approaches?
- How do the estimated costs of an approach compare to reductions in peak DBP occurrences and overall DBP exposure for that approach?

The Advisory Committee considered DBP occurrence estimates to be important in understanding the nature of public health risks. Although the ICR data were collected prior to promulgation of the Stage 1 DBPR, they were collected under a similar sampling strategy. The data support the concept that a system could be in compliance with the RAA Stage 1 DBPR MCLs of 0.080 mg/L and 0.060 mg/L for TTHM and HAA5, respectively, and yet have points in the distribution system with either periodically or consistently higher DBP levels.

Based on these findings, the Advisory Committee discussed an array of alternatives to address disproportionate risk within distribution systems. Alternative options included lowering DBP MCLs, revising the method for MCL compliance determination e.g., requiring individual sampling locations to meet the MCL as an LRAA or requiring that no samples exceed the MCL), and combinations of both. The Advisory Committee also considered the associated technology changes and costs for these alternatives. After narrowing down options, the Advisory Committee

primarily focused on four types of alternative MCL scenarios. These are the alternatives EPA evaluated in the EA, as follows:

Preferred Alternative
- —MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 as LRAAs
- —Bromate MCL remaining at 0.010 mg/L

Alternative 1
- —MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 as LRAAs
- —Bromate MCL of 0.005 mg/L

Alternative 2
- —MCLs of 0.080 mg/L for TTHM and 0.060 mg/L for HAA5 as absolute maximums for individual measurements
- —Bromate MCL remaining at 0.010 mg/L

Alternative 3
- —MCLs of 0.040 mg/L for TTHM and 0.030 mg/L for HAA5 as RAAs
- —Bromate MCL remaining at 0.010 mg/L.

Figure VI.A–1 shows how compliance would be determined under each of the TTHM/HAA5 alternatives described and the Stage 1 DBPR for a hypothetical large surface water system. This hypothetical system has one treatment plant and measures TTHM in the distribution system in four locations per quarter (the calculation methodology shown would be the same for HAA5). Ultimately, the Advisory Committee recommended the Preferred Alternative in combination with an IDSE requirement (discussed in Section IV.F).

Figure VI.A-1. Calculations of Compliance for the Regulatory Alternatives Considered

Basis of Compliance

Violation of MCL

Stage 1 DBPR
TTHM MCL = 80 µg/L measured as an RAA
No exceedance of MCL

	Loc. 1	Loc. 2	Loc. 3	Loc. 4	Qtrly Avg.
Q1	100	40	50	50	60
Q2	75	50	40	100	66
Q3	55	45	55	110	66
Q4	60	55	40	75	58
				RAA	63

Preferred Stage 2 DBPR Alternative and Alternative 1[1]
TTHM MCL = 80 µg/L measured as an LRAA
LRAA at Location 4 exceeds MCL

	Loc. 1[2]	Loc. 2[2]	Loc. 3[2]	Loc. 4[2]
Q1	100	40	50	50
Q2	75	50	40	100
Q3	55	45	55	110
Q4	60	55	40	75
LRAA	73	48	46	84

[1]The Preferred Alternative and Alternative 1 have the same TTHM MCL; they differ only in regard to the bromate MCL.
[2]Based on the IDSE, new locations targeted for high DBPs.

Alternative 2
TTHM MCL = 80 µg/L measured as a single highest value
Three samples at Locations 1 and 4 exceed MCL

	Loc. 1	Loc. 2	Loc. 3	Loc. 4
Q1	100	40	50	50
Q2	75	50	40	100
Q3	55	45	55	110
Q4	60	55	40	75

Alternative 3
TTHM MCL = 40 µg/L measured as an RAA
RAA exceeds MCL

	Loc. 1	Loc. 2	Loc. 3	Loc. 4	Qtrly Avg.
Q1	100	40	50	50	60
Q2	75	50	40	100	66
Q3	55	45	55	110	66
Q4	60	55	40	75	58
				RAA	63

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B. Analyses That Support Today's Final Rule

EPA's goals in designing the Stage 2 DBPR were to protect public health by reducing peak DBP levels in the distribution system while maintaining microbial protection. As described earlier, the Stage 1 DBPR reduces overall average DBP levels, but specific locations within distribution systems can still experience relatively high DBP concentrations. EPA believes that high DBP concentrations should be reduced due to the potential association of DBPs with cancer, as well as reproductive and developmental health effects.

EPA analyzed the benefits and costs of the four regulatory alternatives presented in the previous section. Consistent with the recommendations of the Advisory Committee, EPA is establishing the preferred alternative to achieve the Agency's goals for the Stage 2 DBPR. The following discussion summarizes EPA's analyses that support today's final rule. This discussion explains how EPA predicted water quality and treatment changes, estimated benefits and costs, and assessed the regulatory alternatives.

1. Predicting Water Quality and Treatment Changes

Water quality and treatment data from the ICR were used in predicting treatment plant technology changes (i.e. compliance forecasts) and reductions in DBP exposure resulting from the Stage 2 DBPR. Because ICR data were gathered prior to Stage 1 DBPR compliance deadlines, EPA first accounted for treatment changes resulting from the Stage 1 DBPR. Benefit and cost estimates for the Stage 2 DBPR reflect changes following compliance with the Stage 1 DBPR.

The primary model used to predict changes in treatment and reductions in DBP levels was the Surface Water Analytical Tool (SWAT), which EPA developed using results from the ICR. SWAT results were applied directly for large and medium surface water systems and were adjusted for small surface water systems to account for differences in source water DBP precursor levels and operational constraints in small systems. EPA used ICR data and a Delphi poll process (a group of drinking water experts who provided best professional judgment in a structured format) to project technologies selected by ground water systems.

To address uncertainty in SWAT predictions, EPA also predicted treatment changes using a second methodology, called the "ICR Matrix Method." Rather than a SWAT-predicted pre-Stage 1 baseline, the ICR Matrix Method uses unadjusted ICR TTHM and HAA5 pre-Stage 1 data to estimate the percent of plants changing technology to comply with the Stage 2 DBPR. EPA gives equal weight to SWAT and ICR Matrix Method predictions in estimating Stage 2 compliance forecasts and resultant reductions in DBP exposure. The ICR Matrix Method is also used to estimate reductions in the occurrence of peak TTHM and HAA5 concentrations because SWAT-predicted TTHM and HAA5 concentrations are valid only when considering national averages, not at the plant level.

When evaluating compliance with a DBP MCL, EPA assumed that systems would maintain DBP levels at least 20 percent below the MCL. This safety margin represents the level at which systems typically take action to ensure they meet a drinking water standard and reflects industry practice. In addition, the safety margin accounts for year-to-year fluctuations in DBP levels. To address the impact of the IDSE, EPA also analyzed compliance using a safety margin of 25 percent based on an analysis of spatial variability in TTHM and HAA5 occurrence. EPA assigned equal probability to the 20 and 25 percent safety margin for large and medium surface water systems for the final analysis because both alternatives are considered equally plausible. EPA assumes the 20 percent operational safety margin accounts for variability in small surface water systems and all groundwater systems.

2. Estimating Benefits

Quantified benefits estimates for the Stage 2 DBPR are based on potential reductions in fatal and non-fatal bladder cancer cases. In the EA, EPA included a sensitivity analysis for benefits from avoiding colon and rectal cancers. EPA believes additional benefits from this rule could come from reducing potential reproductive and developmental risks. EPA has not included these potential risks in the primary benefit analysis because of the associated uncertainty.

The major steps in deriving and characterizing potential cancer cases avoided include the following: (1) estimate the current and future annual cases of illness from all causes; (2) estimate how many cases can be attributed to DBP occurrence and exposure; and (3) estimate the reduction in future cases corresponding to anticipated reductions in DBP occurrence and exposure due to the Stage 2 DBPR.

EPA used results from the National Cancer Institute's Surveillance, Epidemiology, and End Results program in conjunction with data from the 2000 U.S. Census to estimate the number of new bladder cancer cases per year (USEPA 2005a). Three approaches were then used to gauge the percentage of cases attributable to DBP exposure (i.e., population attributable risk (PAR)). Taken together, the three approaches provide a reasonable estimate of the range of potential risks. EPA notes that the existing epidemiological evidence has not conclusively established causality between DBP exposure and any health risk endpoints, so the lower bound of potential risks may be as low as zero.

The first approach used the range of PAR values derived from consideration of five individual epidemiology studies. This range was used at the basis for the Stage 1 and the proposed Stage 2 economic analyses (i.e., 2 percent to 17 percent) (USEPA 2003a).

The second approach used results from the Villanueva et al. (2003) meta-analysis. This study develops a combined Odds Ratio (OR) of 1.2 that reflects the ever-exposed category for both sexes from all studies considered in the meta-analysis and yields a PAR value of approximately 16 percent.

The third approach used the Villanueva et al. (2004) pooled data analysis to develop a dose-response relationship for OR as a function of average TTHM exposure. Using the results from this approach, EPA estimates a PAR value of approximately 17 percent.

EPA used the PAR values from all three approaches to estimate the number of bladder cancer cases ultimately avoided annually as a result of the Stage 2 DBPR. To quantify the reduction in cases, EPA assumed a linear relationship between average DBP concentration and relative risk of bladder cancer. Because of this, EPA considers these estimates to be an upper bound on the annual reduction in bladder cancer cases due to the rule.

A lag period (i.e., cessation lag) exists between when reduction in exposure to a carcinogen occurs and when the full risk reduction benefit of that exposure reduction is realized by exposed individuals. No data are available that address the rate of achieving bladder cancer benefits resulting from DBP reductions. Consequently, EPA used data from epidemiological studies that address exposure reduction to cigarette smoke and arsenic to generate three possible cessation lag functions for bladder cancer and DBPs. The cessation lag functions are used in conjunction

with the rule implementation schedule to project the number of bladder cancer cases avoided each year as a result of the Stage 2 DBPR.

Although EPA used three approaches for estimating PAR, for simplicity's sake, EPA used the Villanueva et al. (2003) study to calculate the annual benefits of the Stage 2 DBPR. The benefits estimates derived from Villanueva et al. (2003) capture a substantial portion of the overall range of results, reflecting the uncertainty in both the underlying OR and PAR values, as well as the uncertainty in DBP reductions for Stage 2.

To assign a monetary value to avoided bladder cancer cases, EPA used the value of a statistical life (VSL) for fatal cases and used two alternate estimates of willingness-to-pay to avoid non-fatal cases (one based on curable lymphoma and the other based on chronic bronchitis). EPA believes additional benefits from this rule could come from a reduction in potential reproductive and developmental risks. See Chapter 6 of the EA for more information on estimating benefits (USEPA 2005a).

3. Estimating Costs

Analyzing costs for systems to comply with the Stage 2 DBPR included identifying and costing treatment process improvements that systems will make, as well as estimating the costs to implement the rule, conduct IDSEs, prepare monitoring plans, perform additional routine monitoring, and evaluate significant DBP excursion events. The cost analysis for States/Primacy Agencies included estimates of the labor burdens for training employees on the requirements of the Stage 2 DBPR, responding to PWS reports, and record keeping.

All treatment costs are based on mean unit cost estimates for advanced technologies and chloramines. Derivation of unit costs are described in detail in Technologies and Costs for the Final Long Term 2 Enhanced Surface Water Treatment Rule and Final Stage 2 Disinfectants and Disinfection Byproducts Rule (USEPA 2005g). Unit costs (capital and O&M) for each of nine system size categories are calculated using mean design and average daily flows values. The unit costs are then combined with the predicted number of plants selecting each technology to produce national treatment cost estimates.

Non-treatment costs for implementation, the IDSE, monitoring plans, additional routine monitoring, and operational evaluations are based on estimates of labor hours for performing these activities and on laboratory costs.

While systems vary with respect to many of the input parameters to the Stage 2 DBPR cost analysis (e.g., plants per system, population served, flow per population, labor rates), EPA believes that mean values for the various input parameters are appropriate to generate the best estimate of national costs for the rule. Uncertainty in the national average unit capital and O&M costs for the various technologies has been incorporated into the cost analysis (using Monte Carlo simulation procedures). Costs of the Stage 2 DBPR are estimated at both mean and 90 percent confidence bound values.

EPA assumes that systems will, to the extent possible, pass cost increases on to their customers through increases in water rates. Consequently, EPA has also estimated annual household cost increases for the Stage 2 DBPR. This analysis includes costs for all households served by systems subject to the rule, costs just for those households served by systems actually changing treatment technologies to comply with the rule, costs for households served by small systems, and costs for systems served by surface water and ground water sources.

4. Comparing Regulatory Alternatives

Through the analyses summarized in this section, EPA assessed the benefits and costs of the four regulatory alternatives described previously. Succeeding sections of this preamble present the results of these analyses. As recommended by the Advisory Committee, EPA is establishing the preferred regulatory alternative for today's Stage 2 DBPR. This regulation will reduce peak DBP concentrations in distribution systems through requiring compliance determinations with existing TTHM and HAA5 MCLs using the LRAA. Further, the IDSE will ensure that systems identify compliance monitoring sites that reflect high DBP levels. EPA believes that these provision are appropriate given the association of DBPs with cancer, as well as potential reproductive and developmental health effects.

Alternative 1 would have established the same DBP regulations as the preferred alternative, and would have lowered the bromate MCL from 0.010 to 0.005 mg/L. The Advisory Committee did not recommend and EPA did not establish this alternative because it could have an adverse effect on microbial protection. The lower bromate MCL could cause many systems to reduce or eliminate the use of ozone, which is an effective disinfectant for a broad spectrum of microbial pathogens, including microorganisms like Cryptosporidium that are resistant to chlorine.

Alternative 2 would have prohibited any single sample from exceeding the TTHM or HAA5 MCL. This is significantly more stringent than the preferred alternative and would likely require a large fraction of surface water systems to switch from their current treatment practices to more expensive advanced technologies. Consistent with the Advisory Committee, EPA does not believe such a drastic shift is warranted at this time.

Similarly, Alternative 3, which would decrease TTHM and HAA5 MCLs to 0.040 mg/L and 0.030 mg/L, respectively, and would require a significant portion of surface water systems to implement expensive advanced technologies in place of their existing treatment. Further, compliance with TTHM and HAA5 MCLs under this alternative would be based on the RAA, which does not specifically address DBP peaks in the distribution system as the LRAA, in conjunction with the IDSE, are designed to do. Based on these considerations, EPA and the Advisory Committee did not favor this alternative.

C. Benefits of the Stage 2 DBPR

The benefits analysis for the Stage 2 DBPR includes a description of non-quantified benefits, calculations of quantified benefits, and a discussion of when benefits will occur after today's final rule is implemented. An overview of the methods used to determine benefits is provided in Section VI.B. More detail can be found in the final EA. A summary of benefits for the Stage 2 DBPR is given in this section.

1. Nonquantified Benefits

Non-quantified benefits of the Stage 2 DBPR include potential benefits from reduced reproductive and developmental risks, reduced risks of cancers other than bladder cancer, and improved water quality. EPA believes that additional benefits from this rule could come from a reduction in potential reproductive and developmental risks. However, EPA does not believe the available evidence provides an adequate basis for quantifying these potential risks in the primary analysis.

Both toxicology and epidemiology studies indicate that other cancers may be associated with DBP exposure but currently there is not enough data to include them in the primary analysis. However, EPA believes that the association between exposure to DBPs and colon and rectal cancer is possibly

significant, so an analysis of benefits is presented as a sensitivity analysis.

To the extent that the Stage 2 DBPR changes perceptions of the health risks associated with drinking water and improves taste and odor, it may reduce actions such as buying bottled water or installing filtration devices. Any resulting cost savings would be a regulatory benefit. Also, as PWSs move away from conventional treatment to more advanced technologies, other non-health benefits are anticipated besides better tasting and smelling water. For example, GAC lowers nutrient availability for bacterial growth, produces a biologically more stable finished water, and facilitates management of water quality in the distribution system. Since GAC also removes synthetic organic chemicals (SOCs), it provides additional protection from exposure to chemicals associated with accidental spills or environmental runoff.

2. Quantified Benefits

EPA has quantified the benefits associated with the expected reductions in the incidence of bladder cancer. As discussed in Section VI.B, EPA used the PAR values from all three approaches to estimate the number of bladder cancer cases ultimately avoided annually as a result of the Stage 2 DBPR, shown in Figure VI.C–1.

Table VI.C–1 summarizes the estimated number of bladder cancer cases avoided as a result of the Stage 2 DBPR, accounting for cessation lag and the rule implementation schedule, and the monetized value of those cases. The benefits in Table VI.C–1 were developed using the PAR value from Villanueva et al. (2003), as described in Section VI.B. Table VI.C–1 summarizes the benefits for the Preferred Regulatory Alternative for the Stage 2 DBPR. Benefits estimates for the other regulatory alternatives were derived using the same methods as for the Preferred Regulatory Alternative and are presented in the EA.

The confidence bounds of the results in Table VI.C–1 reflect uncertainty in PAR, uncertainty in the compliance forecast and resulting reduction in DBP concentrations, and cessation lag. Confidence bounds of the monetized benefits also reflect uncertainty in valuation parameters. An estimated 26 percent of bladder cancer cases avoided are fatal, and 74 percent are non-fatal (USEPA 1999b). The monetized benefits therefore reflect the estimate of avoiding both fatal and non-fatal cancers in those proportions.

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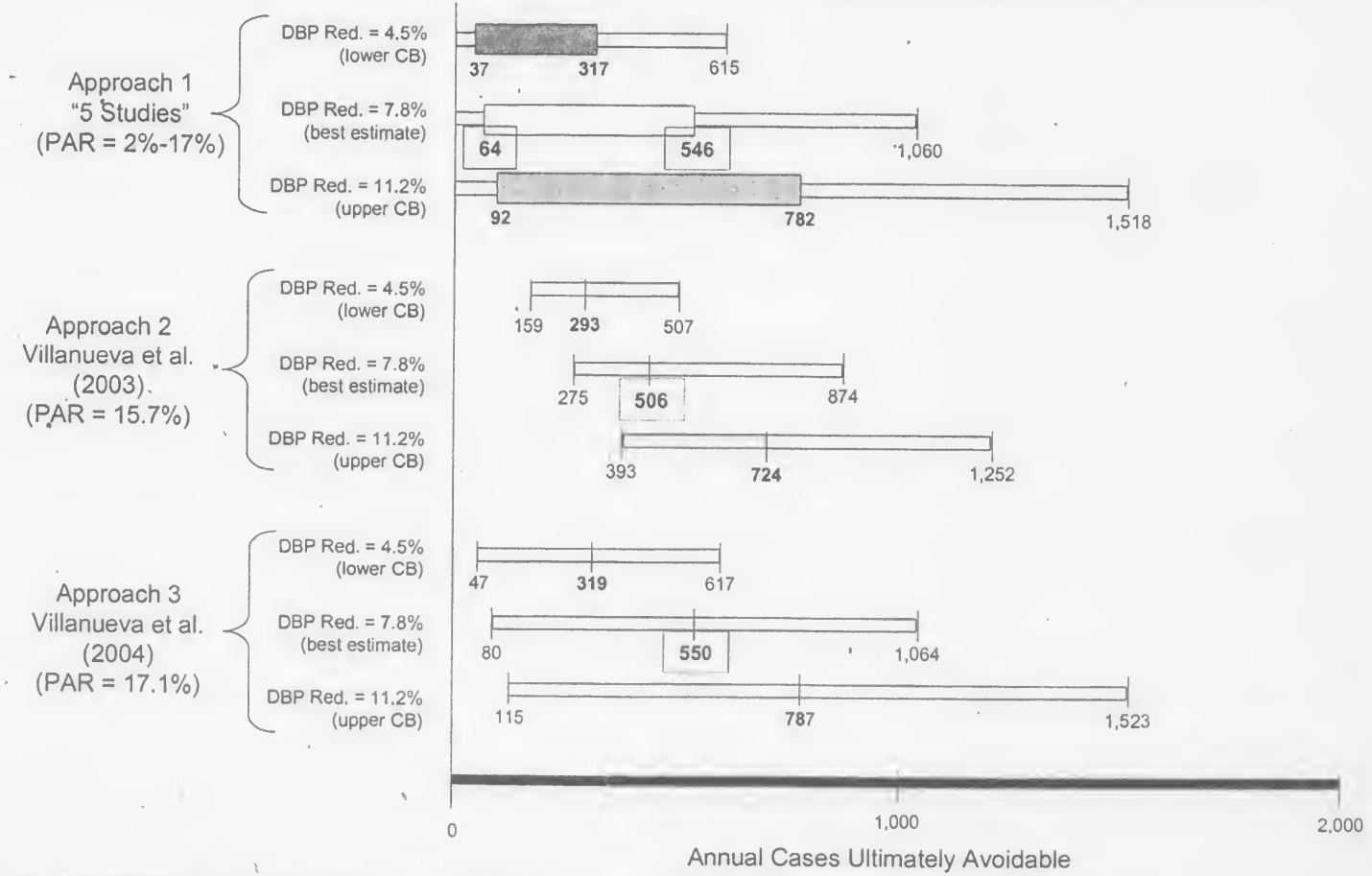
Figure VI.C-1. Comparison of Estimates of Annual Bladder Cancer Cases Ultimately Avoidable from Stage 1 to Stage 2.



Abbreviation: PAR = Population Attributable Risk (values shown are best estimates). CB = Confidence Bound

Notes: Estimated annual cases ultimately avoidable are based on predicted DBP reduction from Stage 1 to Stage 2. Results shown assume that percent reduction in average TTHM concentrations is an indicator of percent reduction in concentrations of all DBPs. Three contributions to the uncertainty in the estimate of the annual cases ultimately avoidable by Stage 2 are displayed in this exhibit: (1) uncertainty in the approach used to estimate PAR; (2) uncertainty in the underlying data used to derive the PAR estimates for each approach, represented by the 95 percent confidence intervals displayed in each horizontal bar; and (3) uncertainty in the percent reduction in the national average DBP levels achieved by Stage 2 is represented by the lower 90 percent CB, best estimate, and upper 90 percent CB values shown for each approach. For Approach 1, the hatched boxes represent the 2 percent to 17 percent range of best estimates from the five separate studies considered.in the Odds Ratios underlying the PAR values. The estimates in boxes are the overall mean (best) estimates for each approach.

TABLE VI.C–1.—SUMMARY OF QUANTIFIED BENEFITS FOR THE STAGE 2 DBPR (MILLIONS OF $2003)

Annual average cases avoided			Discount rate, WTP for non-fatal cases	Annualized benefits of cases avoided			Cessation lag model
Mean	5th	95th		Mean	5th	95th	
279	103	541	3%, Lymphoma	$1,531	$233	$3,536	Smoking/Lung Cancer
			7% Lymphoma	1,246	190	2,878	
			3% Bronchitis	763	165	1,692	
			7% Bronchitis	621	135	1,376	
188	61	399	3%, Lymphoma	1,032	157	2,384	Smoking/Bladder Cancer
			7% Lymphoma	845	129	1,950	
			3% Bronchitis	514	111	1,141	
			7% Bronchitis	420	91	932	
333	138	610	3%, Lymphoma	1,852	282	4,276	Arsenic/Bladder Cancer
			7% Lymphoma	1,545	235	3,566	
			3% Bronchitis	922	200	2,045	
			7% Bronchitis	769	167	1,704	

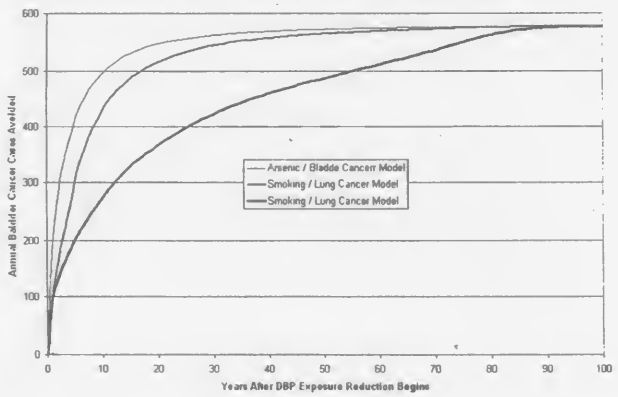
Notes: Values are discounted and annualized in 2003$. The 90 percent confidence interval for cases incorporates uncertainty in PAR, reduction in average TTHM and HAA5 concentrations, and cessation lag. The 90 percent confidence bounds for monetized benefits reflect uncertainty in monetization inputs relative to mean cases. Based on TTHM as an indicator, benefits were calculated using the Villanueva et al. (2003) PAR. EPA recognizes that benefits may be as low as zero since causality has not yet been established between exposure to chlorinated water and bladder cancer. Assumes 26 percent of cases are fatal, 74 percent are non-fatal (USEPA 1999b).

Source: Exhibit 6.1, USEPA 2005a.

3. Timing of Benefits Accrual

EPA recognizes that it is unlikely that all cancer reduction benefits would be realized immediately upon exposure reduction. Rather, it is expected that there will likely be some transition period as individual risks reflective of higher past exposures at the time of rule implementation become, over time, more reflective of the new lower exposures. EPA developed cessation lag models for DBPs from literature to describe the delayed benefits, in keeping with the recommendations of the SAB (USEPA 2001d). Figure VI.C–2 illustrates the effects of the cessation lag models. The results from the cessation lag models show that the majority of the potential cases avoided occur within the first fifteen years after initial reduced exposure to DBPs. For example, fifteen years after the exposure reduction has occurred, the annual cases avoided will be 489 for the smoking/lung cancer cessation lag model, 329 for the smoking/bladder cancer cessation lag model, and 534 cases for the arsenic/bladder cancer cessation lag model. These represent approximately 84%, 57%, and 92%, respectively, of the estimated 581 annual cases ultimately avoidable by the Stage 2 DBPR.

Figure VI.C-2. Comparison of Alternative Cessation Lag Models: Estimates of Annual Cases Avoided by Year Following Exposure Reduction (Excluding Implementation Schedule).



In addition to the delay in reaching a steady-state level of risk reduction as a result of cessation lag, there is a delay in attaining maximum exposure reduction across the entire affected population that results from the Stage 2 DBPR implementation schedule. For example, large surface water PWSs have six years from rule promulgation to meet the new Stage 2 MCLs, with up to a two-year extension possible for capital improvements. In general, EPA assumes that a fairly constant increment of systems will complete installation of new treatment technologies each year, with the last systems installing treatment by 2016. The delay in exposure reduction resulting from the rule implementation schedule is incorporated into the benefits model by adjusting the cases avoided for the given year and is illustrated in Table VI.C–2.

TABLE VI.C–2.—BLADDER CANCER CASES AVOIDED (TTHM AS INDICATOR) EACH YEAR USING THREE CESSATION LAG MODELS

Year	Smoking/lung cancer cessation lag model		Smoking/bladder cancer cessation lag model		Arsenic/bladder cancer cessation lag model	
	Total	Percent	Total	Percent	Total	Percent
1	0	0	0	0	0	0
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	0	0	0	0	0	0
5	0	0	0	0	0	0
6	24	4	23	4	45	8
7	62	11	54	9	110	19
8	111	19	90	16	187	32
9	170	29	132	23	275	48
10	220	38	161	28	334	58
11	265	46	184	32	379	65
12	305	53	204	35	412	71
13	341	59	221	38	438	76
14	371	64	237	41	458	79
15	396	68	251	43	475	82
16	416	72	265	46	488	84
17	433	75	278	48	499	86
18	448	77	289	50	509	88
19	460	79	301	52	516	89
20	471	81	311	54	523	90
21	481	83	321	55	528	91
22	489	84	330	57	533	92
23	496	86	339	59	537	93
24	503	87	347	60	541	93
25	509	88	355	61	544	94

Notes: Percent of annual cases ultimately avoidable achieved during each of the first 25 years. The benefits model estimates 581 (90% CB = 229–1,079) annual cases ultimately avoidable using the Villanueva et al. (2003) PAR inputs and including uncertainty in these and DBP reductions. EPA recognizes that benefits may be as low as zero since causality has not yet been established between exposure to chlorinated water and bladder cancer.

Source: Summarized from detailed results presented in Exhibits E.38a, E.38e and E.38i, USEPA 2005a.

D. Costs of the Stage 2 DBPR

National costs include those of treatment changes to comply with the rule as well as non-treatment costs such as for Initial Distribution System Evaluations (IDSEs), additional routine monitoring, and operational evaluations. The methodology used to estimate costs is described in Section VI.B. More detail is provided in the EA (USEPA 2005a). The remainder of this section presents summarized results of EPA's cost analysis for total annualized present value costs, PWS costs, State/Primacy agency costs, and non-quantified costs.

1. Total Annualized Present Value Costs

Tables VI.D–1 and VI.D–2 summarize the average annualized costs for the Stage 2 DBPR Preferred Regulatory Alternative at 3 and 7 percent discount rates, respectively. System costs range from approximately $55 to $101 million annually at a 3 percent discount rate, with a mean estimate of approximately $77 million per year. The mean and range of annualized costs are similar at a 7 percent discount rate. State costs are estimated to be between $1.70 and $1.71 million per year depending on the discount rate. These estimates are annualized starting with the year of promulgation. Actual dollar costs during years when most treatment changes are expected to occur would be somewhat higher (the same is true for benefits that occur in the future).

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Table VI.D-1. Total Annualized Costs for Stage 2 DBPR Activities ($Millions/Year, 3 Percent Discount Rate).

System Costs																	
	Capital Costs			O&M Costs			Non-Treatment Costs (Point Estimate)					Total System Costs				Total Costs of the Rule		
		90 Percent Confidence Bound			90 Percent Confidence Bound								90 Percent Confidence Bound			90 Percent Confidence Bound	
System Size (Population Served)	Mean Value	Lower (5th %tile)	Upper (95th %tile)	Mean Value	Lower (5th %tile)	Upper (95th %tile)	Implement-ation	IDSE	Monitoring Plans	Moni-toring	Significant Excursion	Mean Value	Lower (5th %tile)	Upper (95th %tile)	State Costs	Mean Value	Lower (5th %tile)	Upper (95th %tile)
Surface Water CWSs																		
< 10,000	$4.21	$2.32	$6.23	$6.10	$3.41	$8.83	$0.12	$0.93	$0.05	-$0.07	$0.02	$11.34	$6.76	$16.10				
≥ 10,000-	$20.60	$11.22	$28.75	$14.33	$9.03	$21.55	$0.09	$1.59	$0.03	-$1.14	$0.11	$35.61	$20.93	$50.97				
Surface Water NTNCWSs																		
< 10,000	$0.27	$0.15	$0.40	$0.57	$0.32	$0.82	$0.01	$0.00	$0.00	$0.02	$0.00	$0.86	$0.49	$1.25				
≥ 10,000	$0.04	$0.02	$0.06	$0.03	$0.02	$0.04	$0.00	$0.00	$0.00	$0.00	$0.00	$0.08	$0.05	$0.11				
Ground Water CWSs																		
< 10,000	$7.41	$6.13	$8.70	$7.20	$6.60	$7.79	$0.30	$0.29	$0.08	$1.05	$0.00	$16.33	$14.45	$18.21				
≥ 10,000	$4.87	$4.37	$5.36	$6.00	$5.64	$6.37	$0.05	$0.10	$0.02	$0.00	$0.00	$11.04	$10.18	$11.90				
Ground Water NTNCWSs																		
< 10,000	$0.57	$0.48	$0.65	$0.75	$0.69	$0.81	$0.06	$0.00	$0.01	$0.42	$0.00	$1.80	$1.65	$1.95				
≥ 10,000	$0.01	$0.01	$0.01	$0.01	$0.01	$0.01	$0.00	$0.00	$0.00	$0.01	$0.00	$0.03	$0.02	$0.03				
TOTAL	**$37.97**	**$24.69**	**$50.17**	**$34.98**	**$25.72**	**$46.22**	**$0.62**	**$2.91**	**$0.19**	**$0.28**	**$0.12**	**$77.08**	**$54.53**	**$100.51**	**$1.71**	**$78.80**	**$56.24**	**$102.22**

Notes: Detail may not add due to independent rounding. 90 percent confidence bound reflects uncertainty in technology compliance forecast and unit treatment costs.

Estimates are discounted to 2003 and given in 2003 dollars.

Source: Exhibit 7.5a, USEPA 2005a.

Table VI.D-2. Total Annualized Costs for Stage 2 DBPR Activities ($Millions/Year, 7 Percent Discount Rate).

System Costs																Total Costs of the Rule		
	Capital Costs			O&M Costs			Non-Treatment Costs (Point Estimate)					Total System Costs						
		90 Percent Confidence Bound			90 Percent Confidence Bound								90 Percent Confidence Bound				90 Percent Confidence Bound	
System Size (Population Served)	Mean Value	Lower (5th %tile)	Upper (95th %tile)	Mean Value	Lower (5th %tile)	Upper (95th %tile)	Implement-ation	IDSE	Monitoring Plans	Moni-toring	Significant Excursion	Mean Value	Lower (5th %tile)	Upper (95th %tile)	State Costs	Mean Value	Lower (5th %tile)	Upper (95th %tile)
Surface Water CWSs																		
< 10,000	$4.53	$2.50	$6.71	$4.86	$2.72	$7.04	$0.15	$1.16	$0.06	-$0.06	$0.01	$10.72	$6.54	$15.08				
≥ 10,000	$23.00	$12.53	$32.10	$11.66	$7.35	$17.54	$0.11	$2.06	$0.04	-$0.90	$0.08	$36.06	$21.27	$51.03				
Surface Water NTNCWSs																		
< 10,000	$0.29	$0.16	$0.43	$0.45	$0.25	$0.66	$0.01	$0.00	$0.00	$0.01	$0.00	$0.76	$0.43	$1.11				
≥ 10,000	$0.05	$0.03	$0.07	$0.02	$0.01	$0.03	$0.00	$0.00	$0.00	$0.00	$0.00	$0.08	$0.05	$0.11				
Ground Water CWSs																		
< 10,000	$7.98	$6.60	$9.37	$5.74	$5.26	$6.21	$0.38	$0.36	$0.09	$0.84	$0.00	$15.38	$13.53	$17.24				
≥ 10,000	$5.39	$4.84	$5.94	$4.87	$4.57	$5.16	$0.06	$0.13	$0.02	$0.00	$0.00	$10.46	$9.62	$11.31				
Ground Water NTNCWSs																		
< 10,000	$0.61	$0.51	$0.70	$0.60	$0.55	$0.65	$0.07	$0.00	$0.01	$0.33	$0.00	$1.62	$1.48	$1.77				
≥ 10,000	$0.01	$0.01	$0.01	$0.01	$0.01	$0.01	$0.00	$0.00	$0.00	$0.01	$0.00	$0.02	$0.02	$0.02				
TOTAL	$41.86	$27.16	$55.33	$28.21	$20.73	$37.29	$0.78	$3.71	$0.23	$0.23	$0.10	$75.11	$52.94	$97.67	$1.70	$76.81	$54.64	$99.36

Notes: Detail may not add due to independent rounding. 90 percent confidence bound reflects uncertainty in technology compliance forecast and unit treatment costs.
Estimates are discounted to 2003 and given in 2003 dollars.

Source: Exhibit 7.5b, USEPA 2005a.

2. PWS costs

PWS costs for the Stage 2 DBPR include non-treatment costs of rule implementation, Initial Distribution System Evaluations (IDSEs), Stage 2 DBPR monitoring plans, additional routine monitoring, and operational evaluations. Systems required to install treatment to comply with the MCLs will accrue the additional costs of treatment installation as well as operation and maintenance. Significant PWS costs for IDSEs, treatment, and monitoring are described in this section, along with a sensitivity analysis.

a. IDSE costs. Costs and burden associated with IDSE activities differ depending on whether or not the system performs the IDSE and, if so, which option a system chooses. All systems performing the IDSE are expected to incur some costs. EPA's analysis allocated systems into five categories to determine the costs of the IDSE—those conducting standard monitoring, SSS, VSS, 40/30, and NTNCWS not required to do an IDSE. EPA then developed cost estimates for each option. Tables VI.D–3, VI.D–4, and VI.D–5 illustrate PWS costs for IDSE for systems conducting an SMP, SSS, and 40/30, respectively.

Table VI.D-3. IDSE Costs for Systems Using Standard Monitoring.

Size Category	Total Number of Systems That Monitor	Develop IDSE monitoring plan and report			Sampling				Total Cost	Total Burden (Hours)	Total Burden (FTEs)
		Preparation of IDSE Monitoring Plan	Preparation of IDSE Report	Reporting Cost per Labor Hour	Number of Dual Sample Sets per System	Hours per Sample	Sampling Cost per Labor Hour	Laboratory Cost per Sample			
	A	B	C	D	E	F	G	H	I=A*((B+C)*D+E*(F*G+H))	J=A*(B+C+E*F)	K=J/2,080
Surface Water and Mixed CWSs											
<500	2,060	4	2	$ 22.55	2	1	$ 22.55	$ 240	$ 1,360,071	16,476	7.9
500-3,299	3,823	4	2	$ 24.74	8	1	$ 24.74	$ 240	$ 8,664,294	53,522	25.7
3,300-9,999	1,888	4	2	$ 30.51	16	1	$ 25.34	$ 240	$ 8,361,031	41,536	20.0
10,000-49,999	1,524	8	4	$ 31.08	48	1	$ 26.05	$ 210	$ 17,835,921	91,440	44.0
50,000-249,999	436	8	8	$ 32.64	96	1	$ 28.00	$ 210	$ 10,189,487	48,832	23.5
250,000-999,999	63	12	12	$ 35.25	144	1	$ 31.26	$ 210	$ 2,242,006	10,584	5.1
1,000,000-4,999,999	14	16	24	$ 35.25	192	1	$ 31.26	$ 210	$ 668,246	3,248	1.6
≥5 M	1	24	24	$ 35.25	240	1	$ 31.26	$ 210	$ 59,594	288	0.1
National Totals	9,809								$ 49,380,649	265,926	127.8
Disinfecting Ground Water Only CWSs											
<500	752	4	2	$ 22.35	2	1	$ 22.35	$ 240	$ 495,114	6,012	2.9
500-9,999	1,956	4	2	$ 24.86	8	1	$ 24.86	$ 240	$ 4,435,321	27,378	13.2
10,000-99,999	240	8	8	$ 31.08	24	1	$ 26.05	$ 210	$ 1,477,430	9,590	4.6
100,000-499,999	18	12	12	$ 35.25	32	1	$ 31.26	$ 210	$ 152,514	997	0.5
> 500,000	1	16	24	$ 35.25	48	1	$ 31.26	$ 210	$ 11,576	78	0.0
National Totals	2,966								$ 6,571,956	44,056	21.2
Surface Water and Mixed NTNCWSs											
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-3,299	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3,300-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-49,999	4	8	4	$ 31.08	48	1	$ 26.05	$ 210	$ 46,813	240	0.1
50,000-249,999	1	8	8	$ 35.25	96	1	$ 31.26	$ 210	$ 23,725	112	0.1
250,000-999,999	0	12	12	N/A	144	1	N/A	$ 210	$ -	-	-
1,000,000-4,999,999	0	16	24	N/A	192	1	N/A	$ 210	$ -	-	-
≥5 M	0	24	24	N/A	240	1	N/A	$ 210	$ -	-	-
National Totals	5								$ 70,538	352	0.2
Disinfecting Ground Water Only NTNCWSs											
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-99,999	1	8	8	$ 31.08	24	1	$ 26.05	$ 210	$ 3,759	24	0.0
100,000-499,999	0	12	12	$ 35.25	32	1	$ 31.26	$ 210	$ 2,484	16	0.0
> 500,000	0	16	24	N/A	48	1	N/A	$ 210	$ -	-	-
National Totals	1								$ 6,243	41	0.0
Grand Totals	12,780								$ 56,029,386	310,375	149.2

Notes: Detail my not add due to independent rounding.
Shaded areas represent systems that are not subject to IDSE requirements.
1 FTE = 2,080 hours (40 hours/week, 52 weeks/year)

Source: Exhibit H.4, USEPA 2005a.

Table VI.D-5. IDSE Costs Systems Qualifying for the 40/30 Certification.

	Selecting Additional Sites		Preparing IDSE Certification					
Size Category	Systems Receiving 40/30 Certification but Adding Stage 2 site(s) A	Hours per System B	Number of Systems Receiving 40/30 Certification C	Reporting Hours per System D	Cost per Labor Hour E	Total Cost F = (A*B+C*D)*E	Total Burden (Hours) G = A*B+C*D	Total Burden (FTEs) H = G/2,080
Surface Water and Mixed CWSs								
<500	-	1	-	1	$ 22.55	$ -	-	-
500-3,299	-	3	235	1	$ 24.74	$ 5,814	235	0.1
3,300-9,999	154	3	154	1	$ 30.51	$ 18,795	616	0.3
10,000-49,999	-	8	249	2	$ 31.08	$ 15,478	498	0.2
50,000-249,999	75	8	75	2	$ 32.64	$ 24,481	750	0.4
250,000-999,999	11	8	11	2	$ 35.25	$ 3,877	110	0.1
1,000,000-4,999,999	2	8	2	2	$ 35.25	$ 705	20	0.0
≥5 M	-	8	-	2	$ 35.25	$ -	-	-
National Total	242		726			$ 69,150	2,229	1.1
Disinfecting Ground Water Only CWSs								
<500	-	1	-	1	$ 22.35	$ -	-	-
500-9,999	9,094	3	9,094	1	$ 24.86	$ 904,287	36,376	17.5
10,000-99,999	1,118	8	1,118	2	$ 31.08	$ 347,474	11,180	5.4
100,000-499,999	-	8	40	2	$ 35.25	$ 2,820	80	0.0
> 500,000	-	8	5	2	$ 35.25	$ 352	10	0.0
National Total	10,212		10,257			$ 1,254,934	47,646	22.9
Surface Water and Mixed NTNCWSs								
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-3,299	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3,300-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-49,999	-	8	1	2	$ 31.08	$ 62	2	0.0
50,000-249,999	-	8	-	2	$ 35.25	$ -	-	-
250,000-999,999	-	8	-	2	N/A	$ -	-	-
1,000,000-4,999,999	-	8	-	2	N/A	$ -	-	-
≥5 M	-	8	-	2	N/A	$ -	-	-
National Total	-		1			$ 62	2	0.0
Disinfecting Ground Water Only NTNCWSs								
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-99,999	3	8	3	2	$ 31.08	$ 932	30	0.0
100,000-499,999	-	8	-	3	$ 35.25	$ -	-	-
> 500,000	-	8	-	6	N/A	$ -	-	-
National Total	3		3			$ 932	30	0.0
Grand Totals	10,457		10,987			$ 1,325,079	49,907	24.0

Notes: Shaded areas represent systems that are not subject to IDSE requirements.
Source: Exhibit H.6, USEPA 2005a.

Table VI.D-4. IDSE Costs for Systems Using SSSs.

Size Category	Number of Systems Qualifying for SSS	Preparation of IDSE Study Plan	Conduct Study	Preparation of IDSE Study Report	Cost per Labor Hour	Total Cost	Total Burden (Hours)	Total Burden (FTEs)
	A	B	C	D	E	F = A*(B+C+D)*E	G = A*(B+C+D)	H = G/2,080
Surface Water and Mixed CWSs								
<500	-	-	-	-	$ -	$ -	-	-
500-3,299	-	-	-	-	$ -	$ -	-	-
3,300-9,999	-	-	-	-	$ -	$ -	-	-
10,000-49,999	-	-	-	-	$ -	$ -	-	-
50,000-249,999	23	20	40	20	$ 32.64	$ 60,060	1,840	0.9
250,000-999,999	7	20	40	20	$ 35.25	$ 19,739	560	0.3
1,000,000-4,999,999	1	20	40	20	$ 35.25	$ 2,820	80	0.0
≥5 M	-	-	-	-	$ -	$ -	-	-
National Total	**31**					**$ 82,618**	**2,480**	**1.2**
Disinfecting Ground Water Only CWSs								
<500	-	-	-	-	$ -	$ -	-	-
500-9,999	-	-	-	-	$ -	$ -	-	-
10,000-99,999	-	-	-	-	$ -	$ -	-	-
100,000-499,999	2	20	40	20	$ 35.25	$ 5,640	160	0.1
> 500,000	-	-	-	-	$ -	$ -	-	-
National Total	**2**					**$ 5,640**	**160**	**0.1**
Surface Water and Mixed NTNCWSs								
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-3,299	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
3,300-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-49,999	-	-	-	-	$ -	$ -	-	-
50,000-249,999	-	-	-	-	$ -	$ -	-	-
250,000-999,999	-	-	-	-	$ -	$ -	-	-
1,000,000-4,999,999	-	-	-	-	$ -	$ -	-	-
≥5 M	-	-	-	-	$ -	$ -	-	-
National Total	**-**					**$ -**	**-**	**-**
Disinfecting Ground Water Only NTNCWSs								
<500	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
500-9,999	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,000-99,999	-	-	-	-	$ -	$ -	-	-
100,000-499,999	-	-	-	-	$ -	$ -	-	-
> 500,000	-	-	-	-	$ -	$ -	-	-
National Total	**-**					**$ -**	**-**	**-**
Grand Totals	**33**					**$ 88,258**	**2,640**	**1.3**

Notes: Detail my not add due to independent rounding.
Shaded areas represent systems that are not subject to IDSE requirements.
SSS = System Specific Study.
Source: Exhibit H.5, USEPA 2005a.

b. PWS treatment costs. The number of plants changing treatment as a result of the Stage 2 DBPR and which technology various systems will install are determined from the compliance forecast. The percent of systems predicted to make treatment technology changes and the technologies predicted to be in place after implementation of the Stage 2 DBPR are shown in Table VI.D–6. The cost model includes estimates for the cost of each technology; the results of the cost model for PWS treatment costs are summarized in Table VI.D–7.

Table VI.D-6. Percent of Plants Changing to Various Treatment Technologies as a Result of the Stage 2 DBPR.

Source	System Classification	System Size (Population Served)	CLM Only	Chlorine Dioxide	UV	Ozone	MF/UF	GAC10	GAC 10 + Alternative Disinfectants	GAC 20	GAC 20 + Alternative Disinfectants	Membranes	Total Converting to CLM	Total Percent of Plants Changing Technology
Surface Water	CWSs	<100	1.9%		7.1%		0.0%			0.0%	1.2%	0.0%	5.4%	10.2%
		100-499	4.1%	0.5%	2.5%	0.0%	0.0%			0.0%	1.3%	0.1%	6.5%	8.4%
		500-999	4.1%	0.5%	2.5%	0.0%	0.0%			0.0%	1.3%	0.1%	6.5%	8.4%
		1,000-3,300	4.2%	1.1%	2.2%	0.0%	0.0%			0.0%	1.3%	0.0%	7.2%	8.8%
		3,301-9,999	4.2%	1.1%	2.2%	0.0%	0.0%			0.0%	1.3%	0.0%	7.2%	8.8%
		10,000-49,999	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		50,000-99,999	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		100,000-999,999	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		1,000,000+	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		All Sizes	5.8%	0.6%	3.1%	0.0%	0.0%	0.0%	0.6%	0.1%	0.8%	0.0%	8.2%	11.1%
	NTNCWSs	<100	1.9%		7.1%		0.0%			0.0%	1.2%	0.0%	5.4%	10.2%
		100-499	4.1%	0.5%	2.5%	0.0%	0.0%			0.0%	1.3%	0.1%	6.5%	8.4%
		500-999	4.1%	0.5%	2.5%	0.0%	0.0%			0.0%	1.3%	0.1%	6.5%	8.4%
		1,000-3,300	4.2%	1.1%	2.2%	0.0%	0.0%			0.0%	1.3%	0.0%	7.2%	8.8%
		3,301-9,999	4.2%	1.1%	2.2%	0.0%	0.0%			0.0%	1.3%	0.0%	7.2%	8.8%
		10,000-49,999	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		50,000-99,999	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %
		100,000-999,999	8.6%	0.3%	3.6%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	0.0%	10.3%	14.6%
		1,000,000+	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %	- %
		All Sizes	3.5%	0.4%	3.8%	0.0%	0.0%	0.0%	0.0%	0.0%	1.2%	0.0%	6.3%	9.0%
Ground Water	CWSs	<100	1.0%		1.1%	0.0%				0.4%		0.0%	2.1%	2.4%
		100-499	1.4%		1.6%	0.0%				0.2%		0.0%	3.0%	3.2%
		500-999	1.4%		1.6%	0.0%				0.2%		0.0%	3.0%	3.2%
		1,000-3,300	1.1%		1.6%	0.0%				0.0%		0.0%	2.7%	2.7%
		3,301-9,999	1.1%		1.6%	0.0%				0.0%		0.0%	2.7%	2.7%
		10,000-49,999	1.4%			0.3%				0.2%		0.2%	2.0%	2.1%
		50,000-99,999	1.4%			0.3%				0.2%		0.2%	2.0%	2.1%
		100,000-999,999	1.3%			0.3%				0.1%		0.2%	1.9%	2.0%
		1,000,000+	1.4%			0.3%				0.1%		0.2%	2.0%	2.1%
		All Sizes	1.3%		1.3%	0.0%				0.2%		0.0%	2.6%	2.8%
	NTNCWSs	<100	1.0%		1.1%	0.0%				0.4%		0.0%	2.1%	2.4%
		100-499	1.4%		1.6%	0.0%				0.2%		0.0%	3.0%	3.2%
		500-999	1.4%		1.6%	0.0%				0.2%		0.0%	3.0%	3.2%
		1,000-3,300	1.1%		1.6%	0.0%				0.0%		0.0%	2.7%	2.7%
		3,301-9,999	1.1%		1.6%	0.0%				0.0%		0.0%	2.7%	2.7%
		10,000-49,999	1.4%			0.3%				0.2%		0.2%	2.0%	2.1%
		50,000-99,999	1.4%			0.3%				0.2%		0.2%	2.0%	2.1%
		100,000-999,999	1.3%			0.3%				0.1%		0.2%	1.9%	2.0%
		1,000,000+	- %			- %				- %		- %	- %	- %
		All Sizes	1.2%		1.4%	0.0%				0.3%		0.0%	2.5%	2.8%

Notes: Detail may not add due to independent rounding.

Source: Summarized from detailed results presented in Exhibits 5.11a-d and 5.14a-d, USEPA 2005a.

Table VI.D-7. Total Initial Capital Costs and Steady-State O&M Costs ($Millions/Year).

Source	System Classification	System Size (population served)	Capital Costs				O&M Costs			
			Mean Value	Median Value	90 Percent Confidence Bound		Mean Value	Median Value	90 Percent Confidence Bound	
					Lower (5th %tile)	Upper (95th %tile)			Lower (5th %tile)	Upper (95th %tile)
Surface Water	CWSs	<100	$ 1 09	$ 1.07	$ 0 58	$ 1.68	$ 0.20	$ 0.20	$ 0.11	$ 0.29
		100-499	$ 3.27	$ 3.22	$ 1 77	$ 4 94	$ 0 82	$ 0.82	$ 0.46	$ 1.19
		500-999	$ 3 86	$ 3.78	$ 2.08	$ 5 89	$ 0.61	$ 0.61	$ 0.34	$ 0.88
		1,000-3,299	$ 24.39	$ 24.27	$ 13.37	$ 36.07	$ 3.36	$ 3.36	$ 1 88	$ 4.86
		3,300-9,999	$ 62.23	$ 61 92	$ 34.42	$ 91.81	$ 5 32	$ 5.34	$ 2.97	$ 7.70
		10,000-49,999	$ 113.20	$ 113.98	$ 62 72	$ 157 05	$ 6 04	$ 6.00	$ 3 74	$ 8.66
		50,000-99,999	$ 67.40	$ 68 08	$ 37.41	$ 93.50	$ 3.41	$ 3.36	$ 2.13	$ 4.95
		100,000-999,999	$ 183 98	$ 186 24	$ 98 21	$ 257 75	$ 8.17	$ 7.87	$ 5.21	$ 12.52
		1,000,000+	$ 86.04	$ 86.46	$ 47.14	$ 120 41	$ 4.91	$ 4.65	$ 3.11	$ 7.73
		All Sizes	$ 545.44	$ 549 03	$ 297.70	$ 769.10	$ 32.84	$ 32.21	$ 19 95	$ 48.78
	NTNCWSs	<100	$ 0.67	$ 0 66	$ 0 36	$ 1.03	$ 0.12	$ 0.12	$ 0.07	$ 0.17
		100-499	$ 1.32	$ 1 31	$ 0.72	$ 2.00	$ 0.33	$ 0.33	$ 0.19	$ 0.48
		500-999	$ 0.85	$ 0 84	$ 0.46	$ 1 30	$ 0.13	$ 0.13	$ 0.07	$ 0.20
		1,000-3,299	$ 1.89	$ 1.88	$ 1 04	$ 2 80	$ 0.26	$ 0.26	$ 0.15	$ 0.38
		3,300-9,999	$ 1.29	$ 1 28	$ 0.71	$ 1.90	$ 0.11	$ 0.11	$ 0.06	$ 0.16
		10,000-49,999	$ 0.55	$ 0 55	$ 0.30	$ 0 76	$ 0.03	$ 0.03	$ 0.02	$ 0.04
		50,000-99,999	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		100,000-999,999	$ 0 41	$ 0 41	$ 0.22	$ 0.57	$ 0.02	$ 0.02	$ 0.01	$ 0.03
		1,000,000+	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		All Sizes	$ 6.99	$ 6 95	$ 3.82	$ 10 36	$ 1.00	$ 1.00	$ 0.56	$ 1.46
	Subtotal		$ 552.43	$ 555.97	$ 301.52	$ 779.46	$ 33.85	$ 33.22	$ 20.52	$ 50.24
Ground Water	CWSs	<100	$ 8 34	$ 8 34	$ 7.19	$ 9.53	$ 0.98	$ 0.98	$ 0.91	$ 1.05
		100-499	$ 33.19	$ 33.18	$ 28 04	$ 38 38	$ 3 68	$ 3.68	$ 3.38	$ 3.98
		500-999	$ 20.18	$ 20.18	$ 17.00	$ 23 34	$ 1.96	$ 1 96	$ 1 80	$ 2.12
		1,000-3,299	$ 39.43	$ 39 42	$ 32.35	$ 46.54	$ 3.00	$ 3 00	$ 2.73	$ 3.26
		3,300-9,999	$ 65.91	$ 65.86	$ 53.53	$ 78.34	$ 2.55	$ 2 55	$ 2 33	$ 2 76
		10,000-49,999	$ 59.09	$ 59.08	$ 53.39	$ 64.79	$ 5.03	$ 5 03	$ 4 76	$ 5.30
		50,000-99,999	$ 14.96	$ 14.96	$ 13.38	$ 16.53	$ 1.28	$ 1 28	$ 1.20	$ 1.36
		100,000-999,999	$ 29.70	$ 29.71	$ 26.43	$ 32.95	$ 2.83	$ 2 83	$ 2.64	$ 3.02
		1,000,000+	$ 3.38	$ 3.38	$ 2.97	$ 3.79	$ 0.43	$ 0.43	$ 0.40	$ 0.46
		All Sizes	$ 274.18	$ 274.11	$ 234.29	$ 314.20	$ 21 73	$ 21.73	$ 20.16	$ 23.31
	NTNCWSs	<100	$ 3.17	$ 3.17	$ 2.73	$ 3 62	$ 0.37	$ 0.37	$ 0.35	$ 0.40
		100-499	$ 5 04	$ 5.04	$ 4.25	$ 5.81	$ 0.55	$ 0.55	$ 0.51	$ 0.60
		500-999	$ 2.47	$ 2.47	$ 2.07	$ 2.87	$ 0 23	$ 0.23	$ 0.21	$ 0.25
		1,000-3,299	$ 1.61	$ 1.61	$ 1.32	$ 1.90	$ 0.10	$ 0.10	$ 0.09	$ 0.11
		3,300-9,999	$ 0 46	$ 0.46	$ 0 38	$ 0.55	$ 0.01	$ 0.01	$ 0.01	$ 0.02
		10,000-49,999	$ 0.10	$ 0.10	$ 0.09	$ 0.11	$ 0.01	$ 0.01	$ 0.01	$ 0.01
		50,000-99,999	$ 0.02	$ 0.02	$ 0.02	$ 0.02	$ 0.00	$ 0.00	$ 0.00	$ 0.00
		100,000-999,999	$ 0.03	$ 0.03	$ 0.03	$ 0.03	$ 0.00	$ 0.00	$ 0.00	$ 0.00
		1,000,000+	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
		All Sizes	$ 12.90	$ 12.90	$ 10.87	$ 14.91	$ 1.29	$ 1.29	$ 1.18	$ 1.39
	Subtotal		$ 287.08	$ 287.01	$ 245.16	$ 329.11	$ 23.02	$ 23.02	$ 21.34	$ 24.70
Total			$ 839.51	$ 842.98	$ 546.68	$ 1,108.57	$ 56.86	$ 56.23	$ 41.86	$ 74.94

Notes: Estimates are discounted to 2003 and given in 2003 dollars.
Detail may not add to totals due to independent rounding.

Source: Exhibit J.1a, USEPA 2005a.

c. Monitoring costs. Because systems already sample for the Stage 1 DBPR, costs for additional routine monitoring are determined by the change in the number of samples to be collected from the Stage 1 to the Stage 2 DBPR. The

Stage 2 DBPR monitoring requirements for systems are based only on population served and source water type, while the Stage 1 DBPR requirements are also based on the number of treatment plants. With this modification in monitoring scheme, the average system will have no change in monitoring costs. The number of samples required is estimated to increase for some systems but actually decrease from the Stage 1 to the Stage 2 DBPR for many systems. Table VI.D–8 summarizes the estimated additional routine monitoring costs for systems.

Table VI.D-8. Total Additional Routine Monitoring Costs for Systems.

Size Category	Total Additional Compliance Samples per Year A	Total Labor Costs B	Total Sampling Costs C	Total Costs D	Total Burden (Hours) E	Total Burden (FTEs) F= E/2080
Surface Water and Mixed CWSs						
<500	(692)	$ 7,844	$ (166,169)	$ (158,325)	348	0.17
500-3,299	(3,571)	$ (58,617)	$ (857,050)	$ (915,667)	(2,369)	(1.14)
3,300-9,999	3,594	$ 91,070	$ 862,541	$ 953,611	3,594	1.73
10,000-49,999	(10,496)	$ (273,425)	$ (2,204,194)	$ (2,477,619)	(10,496)	(5.05)
50,000-249,999	1,452	$ 40,671	$ 305,021	$ 345,692	1,452	0.70
250,000-999,999	609	$ 19,041	$ 127,915	$ 146,956	609	0.29
1,000,000-4,999,999	128	$ 3,996	$ 26,846	$ 30,843	128	0.06
≥5 M	24	$ 735	$ 4,939	$ 5,674	24	0.01
National Totals	**(8,953)**	**$ (168,684)**	**$ (1,900,150)**	**$ (2,068,834)**	**(6,711)**	**(3.23)**
Disinfecting Ground Water Only CWSs						
<500	793	$ 26,209	$ 190,302	$ 216,511	1,173	0.56
500-9,999	5,777	$ 143,617	$ 1,386,523	$ 1,530,140	5,777	2.78
10,000-99,999	552	$ 14,385	$ 115,964	$ 130,349	552	0.27
100,000-499,999	(277)	$ (8,665)	$ (58,213)	$ (66,879)	(277)	(0.13)
> 500,000	(209)	$ (6,546)	$ (43,976)	$ (50,522)	(209)	(0.10)
National Totals	**6,636**	**$ 169,000**	**$ 1,590,600**	**$ 1,759,600**	**7,015**	**3.37**
Surface Water and Mixed NTNCWSs						
<500	0	$ 0	$ 0	$ 0	0	0.00
500-3,299	0	$ 0	$ 0	$ 0	0	0.00
3,300-9,999	96	$ 2,433	$ 23,040	$ 25,473	96	0.05
10,000-49,999	0	$ 0	$ 0	$ 0	0	0.00
50,000-249,999	16	$ 500	$ 3,360	$ 3,860	16	0.01
250,000-999,999	-	$ -	$ -	$ -	0	0.00
1,000,000-4,999,999	-	$ -	$ -	$ -	0	0.00
≥5 M	-	$ -	$ -	$ -	0	0.00
National Totals	**112**	**$ 2,933**	**$ 26,400**	**$ 29,333**	**112**	**0.05**
Disinfecting Ground Water Only NTNCWSs						
<500	1,241	$ 27,552	$ 297,860	$ 325,412	1,241	0.60
500-9,999	1,393	$ 34,481	$ 334,297	$ 368,779	1,393	0.67
10,000-99,999	63	$ 1,633	$ 13,163	$ 14,796	63	0.03
100,000-499,999	9	$ 270	$ 1,815	$ 2,085	9	0.00
> 500,000	-	$ -	$ -	$ -	0	0.00
National Totals	**2,705**	**$ 63,936**	**$ 647,135**	**$ 711,072**	**2,705**	**1.30**
Grand Totals	**500**	**$ 67,185**	**$ 363,986**	**$ 431,171**	**3,122**	**1.50**

Notes: (A) Shows the difference in total compliance monitoring samples from Stage 1 to Stage 2 for disinfecting systems and systems predicted to install disinfection for the GWR.

Source: Exhibits H.8a and H.8b, USEPA 2005a.

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3. State/Primacy Agency Costs

To estimate State/Primacy Agency costs, the estimated number of full-time equivalents (FTEs) required per activity is multiplied by the number of labor hours per FTE, the State/Primacy Agency hourly wage, and the number of States/Primacy Agencies. EPA estimated the number of FTEs required per activity based on experience implementing previous rules, such as the Stage 1 DBPR. State/Primacy Agency costs are summarized in Table VI.D–9.

Table VI.D-9. State/Primacy Agency Cost Summary.

	Total Hours	Average Hours per State	Cost/Labor Hour	Total Cost	Cost per State
	A	B = A/57	C	D	E = D/57
Implementation Activities					
Public Notification	11,856	208	$ 33.60	$ 398,362	$ 6,989
Regulation Adoption and Program Development	59,280	1,040	$ 33.60	$ 1,991,808	$ 34,944
Training State Staff	29,640	520	$ 33.60	$ 995,904	$ 17,472
Training PWS Staff and Technical Assistants	118,560	2,080	$ 33.60	$ 3,983,616	$ 69,888
Updating Data Management System	11,856	208	$ 33.60	$ 398,362	$ 6,989
Subtotal	**231,192**	**4,056**		**$ 7,768,051**	**$ 136,282**
Monitoring Plan Activities					
Monitoring Plans	27,464	482	$ 33.60	$ 926,016	$ 16,246
IDSE Activities					
IDSE Monitoring	66,312	1,163	$ 33.60	$ 2,228,095	$ 39,089
Additional Routine Monitoring Activities					
Recordkeeping and Compliance Tracking	47,424	832	$ 33.60	$ 1,593,446	$ 27,955
Operational Evaluation Costs	3,398	60	$ 33.60	$ 114,173	$ 2,003
Subtotal	**50,822**	**892**		**$ 1,707,619**	**$ 29,958**
Grand Total	**375,790**	**6,593**		**$ 12,629,781**	**$ 221,575**

Notes: All states/primacy agencies are assumed to incur some costs for each activity.
Source: Exhibits H.17 to H.20, USEPA 2005a.

4. Non-quantified Costs

All significant costs that EPA has identified have been quantified. In some instances, EPA did not include a potential cost element because its effects are relatively minor and difficult to estimate. For example, it may be less costly for a small system to merge with neighboring systems than to add advanced treatment. Such changes have both costs (legal fees and connecting infrastructure) and benefits (economies of scale). Likewise, procuring a new source of water would have costs for new infrastructure, but could result in lower treatment costs. Operational costs such as changing storage tank operation were also not considered as alternatives to treatment. These might be options for systems with a single problem area with a long residence time. In the absence of detailed information needed to evaluate situations such as these, EPA has included a discussion of possible effects where appropriate. In general, however, the expected net effect of such situations is lower costs to PWSs. Thus, the EA tends to present conservatively high estimates of costs in relation to non-quantified costs.

E. Household Costs of the Stage 2 DBPR

EPA estimates that, as a whole, households subject to the Stage 2 DBPR face minimal increases in their annual costs. Approximately 86 percent of the households potentially subject to the rule are served by systems serving at least 10,000 people; these systems experience the lowest increases in costs due to significant economies of scale. Households served by small systems that add treatment will face the greatest increases in annual costs. Table VI.E–1 summarizes annual household cost increases for all system sizes.

TABLE VI.E–1.—ANNUAL HOUSEHOLD COST INCREASES.

	Total number of households served	Mean annual household cost increase	Median annual household cost increase	90th percentile annual household cost increase	95th percentile annual household cost increase	Percentage of annual household cost increase < $12 (percent)	Percentage of annual household cost increase < $120 (percent)
Households Served by All Plants							
All Systems	101,553,868	$0.62	$0.03	$0.36	$0.98	99	100
All Small Systems	14,261,241	2.20	0.10	0.79	2.57	97	100
SW < 10,000	3,251,893	4.58	0.79	2.69	7.24	95	99
SW ≥ 10,000	62,137,350	0.46	0.02	0.35	1.81	99	100
GW < 10,000	11,009,348	1.49	0.02	0.39	0.99	98	100
GW ≥ 10,000	25,155,277	0.13	0.00	0.03	0.08	100	100
Households Served by Plants Adding Treatment							
All Systems	10,161,304	$5.53	$0.80	$10.04	$22.40	92	99
All Small Systems	591,623	46.48	18.47	168.85	197.62	38	89
SW < 10,000	285,911	43.05	13.79	173.53	177.93	47	85
SW ≥ 10,000	9,060,119	2.83	0.80	6.98	11.31	96	100
GW < 10,000	305,712	49.69	16.65	109.86	197.62	31	92
GW ≥ 10,000	509,562	5.97	1.37	26.82	33.84	79	100

Notes: Detail may not add to total due to independent rounding. Number of households served by systems adding treatment will be higher than households served by plants adding treatment because an entire system will incur costs even if only some of the plants for that system add treatment (this would result in lower household costs, however).

Source: Exhibit 7.15, USEPA 2005a.

F. Incremental Costs and Benefits of the Stage 2 DBPR

Incremental costs and benefits are those that are incurred or realized in reducing DBP exposures from one alternative to the next more stringent alternative. Estimates of incremental costs and benefits are useful in considering the economic efficiency of different regulatory options considered by the Agency. Generally, the goal of an incremental analysis is to identify the regulatory option where net social benefits are maximized. However, the usefulness of this analysis is constrained when major benefits and/or costs are not quantified or not monetized. Also, as pointed out by the Environmental Economics Advisory Committee of the Science Advisory Board, efficiency is not the only appropriate criterion for social decision making (USEPA 2000i).

For the proposed Stage 2 DBPR, presentation of incremental quantitative benefit and cost comparisons may be unrepresentative of the true net benefits of the rule because a significant portion of the rule's potential benefits are not quantified, particularly potential reproductive and developmental health effects (see Section VI.C). Table VI.F–1 shows the incremental monetized costs and benefits for each regulatory alternative. Evaluation of this table shows that incremental costs generally fall within the range of incremental benefits for each more stringent alternative. Equally important, the addition of any benefits attributable to the non-quantified categories would add to the benefits without any increase in costs.

Table VI.F–1 shows that the Preferred Alternative is the least-cost alternative. A comparison of Alternative 1 with the Preferred Alternative shows that Alternative 1 would have approximately the same benefits as the Preferred Alternative. The costs of Alternative 1 are greater due to the additional control of bromate. However, the benefits of Alternative 1 are less than the Preferred Alternative because the Agency is not able to estimate the additional benefits of reducing the bromate MCL. Alternative 1 was determined to be unacceptable due to the potential for increased risk of microbial exposure. Both benefits and costs are greater for Alternative 2 and Alternative 3 as compared to the Preferred Alternative. However, these regulatory alternatives do not have the risk-targeted design of the Preferred Alternative. Rather, implementation of these stringent standards would require a large number of systems to change treatment technology. The high costs of these regulatory alternatives and the drastic shift in the nation's drinking water practices were considered unwarranted at this time. (See Section VI.A of this preamble for a description of regulatory alternatives.)

TABLE VI.F–1.—INCREMENTAL COSTS AND BENEFITS OF THE STAGE 2 DBPR

WTP for non-fatal bladder cancer cases	Rule alternative	Annual costs	Annual benefits	Incremental costs	Incremental benefits	Incremental net benefits
		A	B	C	D	E=D – C
3 Percent Discount Rate						
Lymphoma	Preferred	$79	$1,531	$79	$1,531	$1,452
	Alternative 1 [1]	254	1,377	(1)	(1)	(1)
	Alternative 2	422	5,167	343	3,637	3,294
	Alternative 3	634	7,130	212	1,962	1,750
Bronchitis	Preferred	79	763	79	763	684

TABLE VI.F–1.—INCREMENTAL COSTS AND BENEFITS OF THE STAGE 2 DBPR—Continued

WTP for non-fatal bladder cancer cases	Rule alternative	Annual costs	Annual benefits	Incremental costs	Incremental benefits	Incremental net benefits
		A	B	C	D	E=D−C
	Alternative 1 [1]	254	686	([1])	([1])	([1])
	Alternative 2	422	2,575	343	1,812	1,469
	Alternative 3	634	3,552	212	978	765
7 Percent Discount Rate						
Lymphoma	Preferred	$77	$1,246	$77	$1,246	$1,170
	Alternative 1 [1]	242	1,126	([1])	([1])	([1])
	Alternative 2	406	4,227	330	2,981	2,651
	Alternative 3	613	5,832	207	1,605	1,399
Bronchitis	Preferred	77	621	77	621	544
	Alternative 1 [1]	242	561	([1])	([1])	([1])
	Alternative 2	406	2,105	330	1,484	1,154
	Alternative 3	613	2,904	207	799	593

Notes: Estimates are discounted to 2003 and given in 2003 dollars. Based on TTHM as an indicator, Villanueva et al. (2003) for baseline risk, and smoking/lung cancer cessation lag model. Assumes 26 percent of cases are fatal, 74 percent are non-fatal (USEPA 1999b). EPA recognizes that benefits may be as low as zero since causality has not yet been established between exposure to chlorinated water and bladder cancer.

[1] Alternative 1 appears to have fewer benefits than the Preferred Alternative because it does not incorporate the IDSE, as explained in Chapter 4. Furthermore, this EA does not quantify the benefits of reducing the MCL for bromate (and potentially associated cancer cases), a requirement that is included only in Alternative 1. This means that Alternative 1 is dominated by the Preferred Alternative in this analysis (having higher costs than the Preferred Alternative but lower benefits), and so it is not included in the incremental comparison of alternatives (Columns C–E). OMB states this in terms of comparing cost effectiveness ratios, but the same rule applies to an incremental cost, benefits, or net benefits comparison: "When constructing and comparing incremental cost-effectiveness ratios, [analysts] * * * should make sure that inferior alternatives identified by the principles of strong and weak dominance are eliminated from consideration." (OMB Circular A–4, p. 10)

Source: Exhibit 9.13, USEPA 2005a.

G. Benefits From the Reduction of Co-occurring Contaminants

Installing certain advanced technologies to control DBPs has the added benefit of controlling other drinking water contaminants in addition to those specifically targeted by the Stage 2 DBPR. For example, membrane technology installed to reduce DBP precursors can also reduce or eliminate many other drinking water contaminants (depending on pore size), including those that EPA may regulate in the future. Removal of any contaminants that may face regulation could result in future cost savings to a water system. Because of the difficulties in establishing which systems would be affected by other current or future rules, no estimate was made of the potential cost savings from addressing more than one contaminant simultaneously.

H. Potential Risks From Other Contaminants

Along with the reduction in DBPs from chlorination such as TTHM and HAA5 as a resultof the Stage 2 DBPR, there may be increases in other DBPs as systems switch from chlorine to alternative disinfectants. For all disinfectants, many DBPs are not regulated and many others have not yet been identified. EPA will continue to review new studies on DBPs and their occurrence levels to determine if they pose possible health risks. EPA continues to support regulation of TTHM and HAA5 as indicators for chlorination DBP occurrence and believes that operational and treatment changes made because of the Stage 2 DBPR will result in an overall decrease in risk.

1. Emerging DBPs

Iodo-DBPs and nitrogenous DBPs including halonitromethanes are DBPs that have recently been reported (Richardson et al. 2002, Richardson 2003). One recent occurrence study sampled quarterly at twelve surface water plants using different disinfectants across the U.S. for several iodo-THMs and halonitromethane species (Weinberg et al. 2002). The concentrations of iodo-THMs and halonitromethane in the majority of samples in this study were less than the analytical minimum reporting levels; plant-average concentrations of iodo-THM and halonitromethane species were typically less than 0.002 mg/L, which is an order of magnitude lower than the corresponding average concentrations of TTHM and HAA5 at those same plants. Chloropicrin, a halonitromethane species, was also measured in the ICR with a median concentration of 0.00019 mg/L across all surface water samples. No occurrence data exist for the iodoacids due to the lack of a quantitative method and standards. Further work on chemical formation of iodo-DBPs and halonitromethanes is needed.

Iodoacetic acid was found to be cytotoxic and genotoxic in Salmonella and mammalian cells (Plewa et al. 2004a) as were some of the halonitromethanes (Kundu et al. 2004; Plewa et al. 2004b). Although potent in these in vitro screening studies, further research is needed to determine if these DBPs are active in living systems. No conclusions on human health risk can be drawn from such preliminary studies.

2. N-Nitrosamines

Another group of nitrogenous DBPs are the N-nitrosamines. A number of N-nitrosamines exist, and N-nitrosodimethylamine (NDMA), a probable human carcinogen (USEPA 1993), has been identified as a potential health risk in drinking water. NDMA is a contaminant from industrial sources and a potential disinfection byproduct from reactions of chlorine or chloramine with nitrogen containing organic matter and from some polymers used as coagulant aids. Studies have produced new information on the mechanism of formation of NDMA, but there is not enough information at this time to draw conclusions regarding a potential increase in NDMA occurrence as systems change treatment. Although there are studies that examined the occurrence of NDMA in some water systems, there are no systematic evaluations of the occurrence of NDMA and other nitrosamines in U.S. waters.

Recent studies have provided new occurrence information that shows NDMA forms in both chlorinated and chloraminated systems. Barrett et al. (2003) reported median concentrations of less than 2ng/L for the seven chlorine systems studied and less than 3 ng/L for 13 chloramine systems. Another study demonstrated that factors other than disinfectant type may play an important role in the formation of NDMA (Schreiber and Mitch 2005). More research is underway to determine the extent of NDMA occurrence in drinking water systems. EPA has proposed monitoring for NDMA under Unregulated Contaminant Monitoring Rule 2 (70 FR 49094, at 49103, August 22, 2005) (USEPA 2005m).

Risk assessments have estimated that the 10^{-6} lifetime cancer risk level is 7 ng/L based on induction of tumors at multiple sites. NDMA is also present in food, tobacco smoke, and industrial emissions, and additional research is underway to determine the relative exposure of NDMA in drinking water to these other sources.

3. Other DBPs

Some systems, depending on bromide and organic precursor levels in the source water and technology selection, may experience a shift to higher ratios, or concentrations, of brominated DBPs while the overall TTHM or HAA5 concentration may decrease. In some instances where alternative disinfectants are used, levels of chlorite and bromate may increase as a result of systems switching to chlorine dioxide or ozone, respectively. However, EPA anticipates that changes in chlorite and bromate concentration as a result of the Stage 2 DBPR will be minimal (USEPA 2005a). For most systems, overall levels of DBPs, as well as brominated DBP species, should decrease as a result of this rule. EPA continues to believe that precursor removal is a highly effective strategy to reduce levels of DBPs.

EPA also considered the impact this rule may have on microbial contamination that may result from altering disinfection practices. To address this concern, the Agency developed this rule jointly with the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR). EPA expects that the LT2ESWTR provisions will prevent increases in microbial risk resulting from the Stage 2 DBPR.

I. Effects of the Contaminant on the General Population and Groups Within the General Population That Are Identified As Likely To Be at Greater Risk of Adverse Health Effects

EPA's Office of Water has historically considered risks to sensitive subpopulations (including fetuses, infants, and children) when establishing drinking water assessments, advisories and other guidance, and standards (USEPA 1989) (56 FR 3526, January 30, 1991) (USEPA 1991). In the case of Stage 2 DBPR, maximizing health protection for sensitive subpopulations requires balancing risks to achieve the recognized benefits of controlling waterborne pathogens while minimizing risk of potential DBP toxicity. Experience shows that waterborne disease from pathogens in drinking water is a major concern for children and other subgroups (e.g., the elderly, immunocompromised, and pregnant women) because of their greater vulnerabilities (Gerba et al. 1996). EPA believes DBPs may also potentially pose risks to fetuses and pregnant women (USEPA 1998a). In addition, because the elderly population (age 65 and above) is naturally at a higher risk of developing bladder cancer, their health risks may further increase as a result of long-term DBP exposure (National Cancer Institute 2002).

In developing this rule, risks to sensitive subpopulations, including children, were taken into account in the assessments of disinfectants and DBPs. More details on sensitive subpopulations can be found in the Economic Analysis (USEPA 2005a). For each of the DBPs included in the Stage 2 DBPR, the maximum contaminant level goals (MCLG) are derived using the most sensitive endpoint among all available data and an intraspecies uncertainty factor of 10 which accounts for human variability including sensitive subpopulations, like children. The Agency has evaluated several alternative regulatory options and selected the one that balances cost with significant benefits, including those for sensitive subpopulations. The Stage 2 DBPR will result in a potential reduction in cancer risk and a potential reduction in reproductive and developmental risk to fetuses and pregnant women. It should be noted that the LT2ESWTR, which accompanies this rule, reduces pathogens in drinking water and further protects sensitive subpopulations. See Section VII.G for a discussion of EPA's requirements under Executive Order 13045.

J. Uncertainties in the Risk, Benefit, and Cost Estimates for the Stage 2 DBPR

For today's final rule, EPA has estimated the current baseline risk from exposure to DBPs in drinking water and projected the risk reduction and cost for various rule alternatives. There is uncertainty in the risk calculation, the benefit estimates, the cost estimates, and the interaction with other regulations. The EA has an extensive discussion of relevant uncertainties (USEPA 2005a). This section briefly summarizes the major uncertainties. Table VI.J–1 presents a summary of uncertainty in the cost and benefit estimates, refers to the section or appendix of the EA where the information is introduced, and estimates the potential effects that each may have on national cost and benefit estimates.

EPA believes that uncertainty in the compliance forecast has a potentially large influence on cost and benefit estimates for today's rule. Thus, the Agency has attempted to quantify the uncertainty by giving equal weight to two different compliance forecast approaches. One compliance forecast approach is based on the SWAT predictions, and the other is based on the "ICR Matrix Method." The ICR Matrix Method uses the same basic approach as SWAT, but uses TTHM and HAA5 data from the ICR directly to estimate the percent of plants changing technology to comply with the Stage 2 DBPR and the resulting DBP reduction. To characterize the uncertainty of the compliance forecast results, EPA assumes a uniform distribution between SWAT and ICR Matrix Method results (USEPA 2005a). That is, the cost and benefit estimates presented in the preamble represent the midpoint between costs and benefits estimated using the SWAT model, and those estimated using the ICR Matrix Method. Cost estimates using the SWAT model are about 25% lower than the midpoint estimates, while those using the ICR Matrix Method are about 25% higher. Benefits estimated using the SWAT model are about 30% lower than the midpoint estimates, while those using the ICR Matrix Method are about 30% higher.

EPA believes the compliance forecast may be overstated because the technology decision tree does not consider low-cost, non-treatment system improvements that could be used to comply with the Stage 2 DBPR. These improvements, including things like flushing more frequently and managing storage facilities to reduce water age, could be used by systems to reduce TTHM and HAA5 levels for specific

locations in their distribution system to meet Stage 2 DBPR MCLs. Thus, the standard compliance forecast method as developed during the M/DBP FACA (with a 20 percent safety margin) is a reasonable estimation. However, SWAT does not explicitly consider the IDSE. To address uncertainty in the impact of the IDSE on the compliance forecast, EPA revised the compliance forecast methodology, assigning equal probability to 20 and 25 percent operational safety margins. EPA believes the 25 percent safety margin is a reasonable high-end estimate of system response to account for the influences of the IDSE. EPA used a spatial variability analysis to determine the appropriate safety margin to use to estimate the impact of the IDSE on the compliance forecast.

These alternative approaches for the compliance forecast estimate are used to represent a range of possible results and are incorporated into the cost and benefit models using Monte Carlo probability functions. EPA believes this approach helps inform the reader of the likely magnitude of the impact of the uncertainties.

In addition to quantifying some uncertainties in the compliance forecasts, EPA has explicitly accounted for uncertainty in estimated treatment technology costs. Treatment costs are modeled using a triangular distribution of ± 30 percent for Capital, and ± 15 percent for O&M costs to recognize that the assumptions for cost analysis to produce the national average are uncertain.

For the cost estimates, uncertainty also exists in baseline data inputs, such as the total number of disinfecting plants and their typical average and design flow rates. Other cost model inputs such as labor rates and laboratory fees also contain uncertainties. In these cases, EPA has evaluated available data and estimated a cost input value to represent the average of all water systems nationally. EPA recognizes that there is uncertainty in this average and variability in the characteristics of individual systems. The influence of these uncertainties on national cost estimates is expected to be fairly minor.

For the benefits estimates, uncertainty exists in model inputs such as the estimated PAR values and the cessation lag models. EPA considered three approaches to estimate attributable risk: (1) a range of risk derived from individual studies, (2) a risk estimate from a meta-analysis, and (3) a risk estimate from a pooled analysis. To quantify uncertainty in cessation lag, three independent cessation lag models derived from three different epidemiological studies are used. Also, two functional forms are used for each of these data sets and uncertainty in the parameters of those functions is included in the analysis. As noted previously, causality has not been established between DBP levels and cancer endpoints, so the lower bound of potential risk reductions may be as low as zero.

In a number of different contexts over the past few years, the Agency has considered the relative merits and assumptions encountered when employing meta-analyses. Cessation lag modeling is a relatively recent analysis that the Agency has incorporated into its risk analyses to more appropriately model the timing of health benefits. The specific papers upon which the Stage 2 analysis is based have been peer reviewed. However, the Agency believes that it is time to consider these Agency-wide science issues in a broader sense with outside experts to better inform the Agency's future analyses.

For monetization of benefits, EPA uses two alternatives for valuing non-fatal bladder cancer. Other uncertainties, such as the linear relationship between DBP reductions and reductions in bladder cancer cases avoided, are discussed qualitatively.

In addition to the uncertainties quantified as part of the benefits evaluation, other uncertainties that have not been quantified could result in either an over-or under-estimation of the benefits. Two of the greatest uncertainties affecting the benefits of the Stage 2 DBPR, benefits from potential reductions of cancers other than bladder and benefits from possible reductions in potential reproductive and developmental health effects, are unquantified. Both of these factors could result in an underestimation of quantified Stage 2 DBPR benefits.

TABLE VI.J–1.—EFFECTS OF UNCERTAINTIES ON NATIONAL ESTIMATES

Assumptions for which there is uncertainty	Section with full discussion of uncertainty	Potential effect on benefit estimate			Potential effect on cost estimates		
		Under-estimate	Over-estimate	Unknown impact	Under-estimate	Over-estimate	Unknown impact
Uncertainty in the industry baseline (SDWIS and 1995 CWSS data).	3.4			X			X
Uncertainty in observed data and predictive tools used to characterize DBP occurrence for the pre-Stage 1 baseline.	3.7			X			X
Uncertainty in predictive tools used to develop the compliance forecast for surface water systems (SWAT and ICR Matrix Method).	Chapter 5, Appendix A.	Quantified in primary analysis (addresses potential underestimate or overestimate)			Quantified in primary analysis (addresses potential underestimate or overestimate)		
Uncertainty in ground water compliance forecast methodologies.	Chapter 5, A and B.			X			X
Operational safety margin of 20%.	5.2			X			X
Impacts of the IDSE on the compliance forecast for the Preferred Regulatory Alternative.	5.3	Quantified in the primary analysis (addresses potential underestimate)			Quantified in the primary analysis (addresses potential underestimate)		

TABLE VI.J–1.—EFFECTS OF UNCERTAINTIES ON NATIONAL ESTIMATES—Continued

Assumptions for which there is uncertainty	Section with full discussion of uncertainty	Potential effect on benefit estimate			Potential effect on cost estimates		
		Under-estimate	Over-estimate	Unknown impact	Under-estimate	Over-estimate	Unknown impact
Uncertainty in the PAR value.	6.1.1 Appendix E.	Quantified in the primary analysis (addresses range of potential effects, but true values could lie outside range)					
Reduction in TTHM and HAA5 used as proxies for all chlorination DBPs.	6.3.3			X.			
DBPs have a linear no-threshold dose-response relationship for bladder cancer effects.	6.2.1		X.				
Uncertainty in benefits valuation inputs.	6.5.2	Quantified in the primary analysis (addresses potential underestimate or overestimate)					
Benefits of reduced cancers other than bladder cancer are not included in the quantitative analysis.	6.7	Quantified in a sensitivity analysis (addresses potential underestimate)					
Value of potential reproductive and developmental health effects avoided is not quantified in the primary analysis.	6.8	X.					
Treatment costs do not include costs for minor operational changes predicted by SWAT.	7.4.1				X.		
Median operational and water quality parameters considered for technology unit costs.	7.4.1						X
Economies of scale for combination treatment technologies not considered.	7.4.1					X.	
Possible UV-chloramine synergy not taken into account.	7.4.1					X.	
Potential low-cost alternatives to treatment not considered.	7.4.2					X.	
Uncertainties in unit costs	7.4.3				Quantified in primary analysis (addresses potential overestimate or underestimate)		

K. Benefit/Cost Determination for the Stage 2 DBPR

The Agency has determined that the benefits of the Stage 2 DBPR justify the costs. As discussed previously, the main concern for the Agency and the Advisory Committee involved in the Stage 2 rulemaking process was to provide more equitable protection from DBPs across the entire distribution system and reduce high DBP levels. The final rule achieves this objective using the least cost alternative by targeting sampling locations with high DBP levels and modifying how the annual average DBP level is calculated. This will reduce both average DBP levels associated with bladder cancer (and possibly other cancers) and peak DBP levels which are potentially associated with reproductive and developmental effects. In addition, this rule may reduce uncertainty about drinking water quality and may allow some systems to avoid installing additional technology to meet future drinking water regulations.

Table VI.K–1 presents net benefits for the four regulatory alternatives evaluated by EPA. This table shows that net benefits are positive for all four regulatory alternatives. Generally, analysis of net benefits is used to identify alternatives where benefits exceed costs, as well as the alternative that maximizes net benefits. However, analyses of net benefits should consider both quantified and non-quantified (where possible) benefits and costs. As discussed previously with incremental net benefits, the usefulness of this analysis in evaluating regulatory alternatives for the Stage 2 DBPR is somewhat limited because many benefits from this rule are non-quantified and non-monetized.

Table VI.K–1 shows that the Preferred Alternative is the least cost alternative. The Preferred Alternative has higher mean net benefits than Alternative 1. Alternatives 2 and 3 have higher benefits than the Preferred Alternative but also much greater costs. These regulatory alternatives do not have the risk-targeted design of the Preferred Alternative. Rather, a large number of systems would be required to make treatment technology changes to meet the stringent standards under these regulatory alternatives. Also, because causality has not been established between DBP exposure and bladder cancer, actual benefits may be as low as zero. EPA is promulgating the preferred regulatory alternative because the Agency believes that such a drastic shift in the nation's drinking water practices is not warranted at this time.

TABLE VI.K–1.—MEAN NET BENEFITS BY REGULATORY ALTERNATIVE ($MILLION)

Rule alternative	WTP for non-fatal bladder cancer cases	Mean annual costs	Mean annual benefits	Mean net benefits
3 Percent Discount Rate, 25 Years				
Preferred	Lymphoma	$78.8	$1,530.8	$1,452
A1		254.1	1,376.6	1,122
A2		421.7	5,167.4	4,746
A3		634.2	7,129.6	6,495
Preferred	Bronchitis	78.8	762.8	684
A1		254.1	685.9	432
A2		421.7	2,574.6	2,153
A3		634.2	3,552.2	2,918
7 Percent Discount Rate, 25 Years				
Preferred	Lymphoma	$76.8	$1,246.5	$1,170
A1		241.8	1,126.4	885
A2		406.4	4,227.2	3,821
A3		613.1	5,832.4	5,219
Preferred	Bronchitis	76.8	620.7	544
A1		241.8	560.8	319
A2		406.4	2,104.6	1,698
A3		613.1	2,903.8	2,291

Notes: Estimates are discounted to 2003 and given in 2003 dollars. Based on TTHM as an indicator, Villanueva et al. (2003) for baseline risk, and smoking/lung cancer cessation lag model. Assumes 26 percent of cases are fatal, 74 percent are non-fatal (USEPA 1999b). EPA recognizes that benefits may be as low as zero since causality has not yet been established exposure to chlorinated water and bladder cancer.

Source: Exhibits 9.10 and 9.11, USEPA 2005a.

The Agency also compared the costs and benefits for each regulatory alternative by calculating which option is the most cost-effective. The cost-effectiveness analysis compares the cost of the rule per bladder cancer case avoided. This cost-effectiveness measure is another way of examining the benefits and costs of the rule, but should not be used to compare alternatives because an alternative with the lowest cost per illness/death avoided may not result in the highest net benefits. Table VI.K–2 shows the cost of the rule per case avoided. This table shows that cost per case avoided for the preferred alternative seems favorable when compared to the willingness to pay estimates. Additional information about this analysis and other methods of comparing benefits and costs can be found in the EA (USEPA 2005a).

TABLE VI.K–2.—ESTIMATED COST PER DISCOUNTED CASED AVOIDED [1] FOR THE REGULATORY ALTERNATIVES, USING TTHM AS DBP INDICATOR AND SMOKING/LUNG CANCER CESSATION LAG MODEL ($MILLIONS, 2003)

Rule alternative	Cost per case avoided	
	3%	7%
Preferred	$.033	$.041
Alternative 1	1.18	1.42
Alternative 2	0.52	0.63
Alternative 3	0.57	0.69

[1] The cost effectiveness ratios are a potentially a high estimate because regulatory costs in the numerator are not adjusted by subtracting the avoided medical costs associated with cases avoided to produce a net cost numerator. Subtraction of theses costs would not be expected to alter the ranking of alternatives. In the case where thresholds of maximum public expenditure per case avoided are prescribed, defining the numerator more precisely by making such adjustments would be appropriate.

Notes: In reference to conducting incremental CEA, OMB states that analyst should make sure that "When constructing and comparing incremental cost-effectiveness ratios, [analysts] should make sure that inferior alternatives identified by the principles of strong and weak dominance are eliminated from consideration" (OMB Circular A–4, p. 10). Alternative 1 is dominated by the Preferred Alternative and is therefore not included in the incremental analysis. The reason for this domination is mainly that the Preferred Alternative includes IDSE and Alternative 1 does not; and to a lesser degree because the bromate control included in Alternative 1 increases the costs but the benefits of this control are not quantified at this time. Alternative 2 is compared directly to the Preferred Alternative (skipping Alternative 1) in this analysis. Cost per case avoided is in year 2003 dollars ($Millions), discounted for the 25 year analysis period to year 2005.

Source: Exhibit 9.14, USEPA, 2005a.

L. Summary of Major Comments

EPA received significant public comment on the analysis of benefits and costs of the proposed Stage 2 DBPR in the following areas: interpretation of health effects studies, derivation of benefits, use of SWAT, illustrative example, unanticipated risk issues, and valuation of cancer cases avoided. The following discussion summarizes public comment in these areas and EPA's responses.

1. Interpretation of Health Effects Studies

EPA requested comment on the conclusions of the cancer health effects section and the epidemiology and toxicology studies discussed. A number of comments questioned the overall

interpretation of the studies presented by EPA. A few comments pointed out missed studies. Commenters also asked about concordance between cancer epidemiology and toxicology. Some commenters also felt EPA did not discuss the broad range of risks from DBPs other than the ones regulated.

The Agency continues to believe that, although there is not a causal link, the cancer literature points to an association between bladder cancer and potentially rectal and colon cancer and exposure to chlorinated surface water. EPA has included in today's preamble the literature that commenters pointed out as missing and expands on its discussion of non-regulated DBPs.

EPA believes that a lack of bladder cancer effect in toxicological studies does not negate the findings in epidemiological studies at this time. Tumor site concordance between human and test animal is not necessary to determine carcinogenic potential. While there is evidence from human cancer epidemiology studies that lifetime consumption of the DBP mixture within chlorinated surface water poses a bladder cancer risk, the specific causative constituents have not been identified. EPA will continue to evaluate new mode-of-action data as it becomes available.

Several comments were received on EPA's characterization of the literature on reproductive and developmental health risk. Some commenters wanted EPA to characterize reproductive and developmental health effects more strongly, stating that current research shows more evidence for these effects than described in the proposed preamble. Others thought that EPA's characterization in the proposal was too strong, and that EPA had overemphasized these health concerns. Some commenters noted that certain published studies were missing from EPA's risk discussion.

EPA believes that the characterization of reproductive and developmental risks in the final Stage 2 DBPR preamble is appropriate based on the weight of evidence evaluation of the reproductive and developmental epidemiology database described in Section III.C. EPA considered comments and incorporated additional and recent studies into its characterization of health risks in today's final preamble. While no causal link has been established, EPA's evaluation of the available studies continues to indicate a potential health hazard that warrants additional regulatory action beyond the Stage 1 DBPR. The inconsistencies and uncertainties remaining in the available science support the incremental nature of change in today's rule.

EPA did not include all findings from every study in the proposed DBPR preamble because the intent was to provide a summary overview and more importantly, the Agency's conclusions regarding the weight of evidence. The epidemiology literature has inconsistencies in its findings on the relationship between various reproductive and developmental health effects and DBPs. In this final preamble, EPA describes how recent studies since the proposal further inform the perspective of overall risk from exposure to DBPs. EPA continues to believe that studies indicate a potential hazard.

2. Derivation of Benefits

EPA received numerous comments on the derivation of benefits from occurrence estimates for the Stage 2 DBPR. The majority of the comments provided addressed EPA's use of a cessation lag model to estimate the timing of benefits and a PAR analysis to estimate reduced risks. Several commenters opposed the cessation lag model proposed by EPA, suggesting that EPA use a longer cessation lag period or conduct a sensitivity analysis on the cessation lag exponent.

In the effort to develop a cessation lag model specific to DBPs, EPA reviewed the available epidemiological literature for information relating to the timing of exposure and response, but could not identify any studies that could, alone or in combination, support a specific cessation lag model for DBPs in drinking water. Thus, in keeping with the SAB recommendation to consider other models in the absence of specific cessation lag information (USEPA 2001d), EPA explored the use of information on other carcinogens that could be used to characterize the influence of cessation lag in calculating benefits. The benefit analysis for today's rule uses three cessation lag models, which allows for a better characterization of uncertainty than did the approach used in the proposal. More details on this analysis are in the EA (USEPA 2005a).

Additional comments were received on the use of PAR values derived from epidemiology studies to determine the number of bladder cancer cases attributable to DBP exposure. Some commenters remarked that there was not sufficient evidence in the epidemiology studies used to develop a reliable PAR estimate. A key issue expressed in the comments was that studies that developed the PAR estimates did not adequately control for confounders. One commenter supported EPA review of the Villanueva (2003) meta-analysis, stating that this was the best available data on the issue.

EPA revised the methodology for calculating PAR values for bladder cancer associated with exposure to chlorinated drinking water by considering three different analytical approaches as described in Section V.B.2. EPA used the PAR values from all three approaches to estimate the number of bladder cancer cases ultimately avoided annually as a result of the Stage 2 DBPR. Taken together, the three approaches provide a reasonable estimate of the range of potential risk. For simplicity, EPA used the Villanueva *et al.* (2003) study to calculate the annual benefits of the rule. The benefit estimates derived from Villanueva *et al.* (2003) capture a substantial portion of the overall range of results, reflecting the uncertainty in both the underlying OR and PAR values, as well as the uncertainty in DBP reductions for Stage 2. More details on the PAR analysis can be found in the EA (USEPA 2005a).

3. Use of SWAT

Comments received on the use of SWAT for the compliance forecast claimed that the model probably underestimates DBP occurrence levels and hence underestimates compliance costs. Other commenters supported EPA's occurrence estimation methods and results. Some commenters added that monitoring under the IDSE will produce different results than monitoring for the ICR and that SWAT did not capture these changes.

EPA describes in detail the limitations of SWAT as well as all assumptions and uncertainties associated with the model in the EA published with today's rule. EPA believes that, for the reasons stated below, the standard compliance forecast method using SWAT, as developed during the M-DBP FACA, provides a reasonable prediction of national treatment changes and resulting DBP levels anticipated for the Stage 2 DBPR:

1. SWAT predictive equations for TTHM and HAA5 were calibrated to ICR-observed TTHM and HAA5 data.

2. SWAT estimates are based on 12 months of influent water quality data, treatment train information, and related characteristics for the 273 ICR surface water plants. EPA believes the ICR data provide a robust basis for the compliance forecast as it represents significant variability with respect to factors influencing DBP formation, including temperature, residence time, and geographical region.

3. EPA uses a "delta" approach to reduce the impact of uncertainty in

SWAT's predictive equations for TTHM and HAA5. Under this approach, EPA 1) estimates the difference in technology and TTHM and HAA5 concentration predictions between pre-Stage 1 and post-Stage 1; 2) estimates the difference in technology and TTHM and HAA5 concentration predictions between pre-Stage 1 and post-Stage 2; and 3) subtracts the result of the first estimate from the second estimate to predict the impacts between Stage 1 and Stage 2. Since each predictive estimate has bias in the same direction, EPA believes that this methodology minimized overall predictive error.

In response to commenters concerns about potential uncertainties in the SWAT predictions, EPA also developed the "ICR Matrix Method." The ICR Matrix Method uses TTHM and HAA5 data from the ICR to estimate the percent of plants changing technology to comply with the Stage 2 DBPR and the resulting DBP reduction. The EA includes a detailed description of the ICR Matrix Method (USEPA 2005a). In the analysis for today's rule, EPA gives equal weight to SWAT and ICR Matrix Method predictions in estimating Stage 2 compliance forecasts and resultant reductions in DBP exposure. The ICR Matrix Method is also used to estimate reductions in the occurrence of peak TTHM and HAA5 concentrations because SWAT-predicted TTHM and HAA5 concentrations are valid only when considering national averages, not at the plant level.

EPA revised the Stage 2 DBPR compliance forecast methodology to quantify the potential impacts of the IDSE for large and medium surface water systems. For these systems, EPA predicted compliance implications using a safety margin of both 20 and 25 percent based on an analysis of spatial variability in TTHM and HAA5 occurrence. EPA assigned equal probability to the 20 and 25 percent safety margins because both alternatives are considered equally plausible. These changes result in a wider uncertainty range for the compliance cost estimates than under the EA of the proposed rule. EPA assumes the 20 percent operational safety margin accounts for variability in small surface water systems and all ground water systems. Small systems are not expected to find significantly higher levels that affect their compliance as a result of the IDSE because their distribution systems are not as complex as large systems. Additionally, the IDSE is not expected to significantly impact the compliance forecast for ground water systems because they have more consistent source water quality and do not experience significant year-to-year variability in TTHM and HAA5 occurrence.

As some commenters noted, any underestimation in costs as a result of the compliance forecast is associated with an underestimation in the benefits. Accordingly, EPA adjusted both cost and benefits estimates based on the ICR Matrix Method and the impact of the IDSE for the upper end of the compliance forecast range.

4. Illustrative Example

Many comments were received on the illustrative calculation of fetal loss benefits included in the proposed EA. Many commenters recommended that EPA remove this calculation because of uncertainties in the underlying data. Other commenters, however, expressed support for this calculation because of the magnitude of potential benefits, and suggested that EPA include these benefits in its primary analysis.

EPA believes that the reproductive and developmental epidemiologic data, although not conclusive, are suggestive of potential health effects in humans exposed to DBPs. EPA does not believe the available evidence provides an adequate basis for quantifying potential reproductive and developmental risks. Nevertheless, given the widespread nature of exposure to DBPs, the importance our society places on reproductive and developmental health, and the large number of fetal losses experienced each year in the U.S. (nearly 1 million), the Agency believes that it is appropriate to provide some quantitative indication of the potential risk suggested by some of the published results on reproductive and developmental endpoints, despite the absence of certainty regarding a causal link between disinfection byproducts and these risks and the inconsistencies between studies. However, the Agency is unable at this time to either develop a specific estimate of the value of avoiding fetal loss or to use a benefit transfer methodology to estimate the value from studies that address other endpoints.

5. Unanticipated Risk Issues

Comments were received that expressed concern about unanticipated risks that could result from the proposed Stage 2 DBPR. Several commenters remarked that regulation of TTHM and HAA5 would not control levels of other DBPs that may be more toxic than these indicator compounds, such as NDMA. Some commenters supported future research on the potential health effects of other DBPs. Other comments suggested that EPA further consider these risks when developing the final Stage 2 DBPR.

EPA has addressed the occurrence of other DBPs in Section VI.H of this document and in the EA (USEPA 2005a). Levels of some DBPs may increase because of treatment changes anticipated as a result of today's rule. However, these DBPs generally occur at much lower levels than TTHM and HAA5, often more than an order of magnitude less (USEPA 2005f, Weinberg et al. 2002). For NDMA, studies have shown formation in both chlorinated and chloraminated systems (Barrett et al. 2003). The uncertainties surrounding NDMA formation make determinations regarding the impact of the Stage 2 DBPR difficult. In addition, other routes of exposure appear to be more significant than drinking water. Dietary sources of NDMA include preserved meat and fish products, beer and tobacco. EPA is looking at calculating the relative source contribution of these routes of exposure compared to drinking water.

EPA continues to support the use of TTHM and HAA5 as indicators for DBP regulation. The presence of TTHM and HAA5 is representative of the occurrence of many other chlorination DBPs; thus, a reduction in the TTHM and HAA5 generally indicates an overall reduction of DBPs. EPA also supports additional research on unregulated and unknown DBPs to ensure continual public health protection.

6. Valuation of Cancer Cases Avoided

A number of commenters remarked on the valuation of cancer cases avoided. Some commenters supported the use of value of statistical life (VSL) analysis in monetizing the benefits of fatal bladder cancer cases avoided. Comments were also received in support of the addition of expected medical costs for treating fatal bladder cancer cases to the VSL estimates. Other commenters recommended that EPA further review the use of willingness-to-pay estimates used to value the non-fatal cancer cases avoided. These comments stated concern over the similarity of bronchitis and lymphoma to bladder cancer and the resulting limitation of benefits transfer.

EPA thanks commenters for expressing support of the use of VSL and valuation of fatal bladder cancer cases. EPA acknowledges that the willingness to pay (WTP) to avoid curable lymphoma or chronic bronchitis is not a perfect substitute for the WTP to avoid a case of non-fatal bladder cancer. However, non-fatal internal cancers, regardless of type, generally present patients with very similar

treatment, health, and long-term quality of life implications, including surgery, radiation or chemotherapy treatments (with attendant side effects), and generally diminished vitality over the duration of the illness. In the absence of more specific WTP studies, EPA believes the WTP values for avoiding a case of curable lymphoma or a case of chronic bronchitis provides a reasonable, though not definitive, substitute for the value of avoiding non-fatal bladder cancer.

VII. 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 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, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0265 (USEPA 2005n).

The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, and to evaluate compliance with the rule. For the first three years after Stage 2 DBPR promulgation, the major information requirements involve monitoring activities, which include conducting the IDSE and submission of the IDSE report, and tracking compliance. The information collection requirements are mandatory (Part 141), and the information collected is not confidential.

The estimate of annual average burden hours for the Stage 2 DBPR for systems and States is 228,529 hours. This estimate covers the first three years of the Stage 2 DBPR and most of the IDSE (small system reports are not due until the fourth year). The annual average aggregate cost estimate is $9.8 million for operation and maintenance as a purchase of service for lab work and $6.6 million is associated with labor. The annual burden hour per response is 4.18 hours. The frequency of response (average responses per respondent) is 7.59 annually. The estimated number of likely respondents is 7,202 per year (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding). Because disinfecting systems have already purchased basic monitoring equipment to comply with the Stage 1 DBPR, EPA assumes no capital start-up costs are associated with the Stage 2 DBPR ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or 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.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administrations's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Council for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that Final Rule, the alternative definition is applied to this regulation as well.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities regulated by this final rule are PWSs serving fewer than 10,000 people. We have determined that 92 small surface water and ground water under the direct influence of surface water (GWUDI) systems (or 2.16% of all

small surface water and GWUDI systems affected by the Stage 2 DBPR) will experience an impact of 1% or greater of average annual revenues. Of the 92, 40 small surface water and GWUDI systems (or 0.94% of all small surface water and GWUDI systems affected by the Stage 2 DBPR) will experience an impact of 3% or greater of average annual revenues. Further, 354 small ground water systems (or 1.02% of all small ground water systems affected by the Stage 2 DBPR) will experience an impact of 1% or greater of average annual revenues. Of the 354, 45 small ground water systems (or 0.13% of all small ground water systems affected by the Stage 2 DBPR) will experience an impact of 3% or greater of average annual revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. The Stage 2 DBPR contains a number of provisions to minimize the impact of the rule on systems generally, and on small systems in particular. For example, small systems have a longer time frame to comply with requirements than large systems (see § 141.600(c) and § 141.620(c)). The final rule determines monitoring frequency based on population rather than plant-based monitoring requirements (see § 141.605 and § 141.621(a)) as proposed. Small systems will also have to take fewer samples than large systems due to the 40/30 waiver (see § 141.603(a)), for which small, ground water systems are expected to be able to qualify, and the very small system waiver (see § 141.604).

Funding may be available from programs administered by EPA and other Federal agencies to assist small PWSs in complying with the Stage 2 DBPR. The Drinking Water State Revolving Fund (DWSRF) assists PWSs with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Through the DWSRF, EPA awards capitalization grants to States, which in turn can provide low-cost loans and other types of assistance to eligible PWSs. Loans made under the program can have interest rates between 0 percent and market rate and repayment terms of up to 20 years. States prioritize funding based on projects that address the most serious risks to human health and assist PWSs most in need. Congress provided the DWSRF program $8 billion for fiscal years 1997 through 2004.

The DWSRF places an emphasis on small and disadvantaged communities. States must provide a minimum of 15% of the available funds for loans to small communities. A State has the option of providing up to 30% of the grant awarded to the State to furnish additional assistance to State-defined disadvantaged communities. This assistance can take the form of lower interest rates, principal forgiveness, or negative interest rate loans. The State may also extend repayment terms of loans for disadvantaged communities to up to 30 years. A State can set aside up to 2% of the grant to provide technical assistance to PWSs serving communities with populations fewer than 10,000.

In addition to the DWSRF, money is available from the Department of Agriculture's Rural Utility Service (RUS) and Housing and Urban Development's Community Development Block Grant (CDBG) program. RUS provides loans, guaranteed loans, and grants to improve, repair, or construct water supply and distribution systems in rural areas and towns of up to 10,000 people. In fiscal year 2003, RUS had over $1.5 billion of available funds for water and environmental programs. The CDBG program includes direct grants to States, which in turn are awarded to smaller communities, rural areas, and coloñas in Arizona, California, New Mexico, and Texas and direct grants to U.S. territories and trusts. The CDBG budget for fiscal year 2003 totaled over $4.4 billion.

Although not required by the RFA to convene a Small Business Advocacy Review (SBAR) Panel because EPA determined that the proposed rule would not have a significant economic impact on a substantial number of small entities, EPA did convene a panel to obtain advice and recommendations from representatives of the small entities potentially subject to this rule's requirements. For a description of the SBAR Panel and stakeholder recommendations, please see the proposed rule (USEPA 2003a).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule may contain a Federal mandate that results in expenditures of $100 million or more for the State, Local, and Tribal governments, in the aggregate in the private sector in any one year. While the annualized costs fall below the $100 million threshold, the costs in some future years may be above the $100 million mark as public drinking water systems make capital investments and finance these through bonds, loans, and other means. EPA's year by year cost tables do not reflect that investments through bonds, loans, and other means spread out these costs over many years. The cost analysis in general does not consider that some systems may be eligible for financial assistance such as low-interest loans and grants through such programs as the Drinking Water State Revolving Fund.

As noted earlier, today's final rule is promulgated pursuant to section 1412 (b)(1)(A) of the Safe Drinking Water Act (SDWA), as amended in 1996, which directs EPA to promulgate a national primary drinking water regulation for a contaminant if EPA determines that the contaminant may have an adverse effect on the health of persons, occurs in PWSs with a frequency and at levels of public health concern, and regulation presents a meaningful opportunity for health risk reduction.

Section VI of this preamble discusses the cost and benefits associated with the Stage 2 DBPR. Details are presented in the Economic Analysis (USEPA 2005a).

TABLE VII.D–1—PUBLIC AND PRIVATE COSTS FOR THE STAGE 2 DBPR (ANNUALIZED AT 3 AND 7 PERCENT, $MILLIONS)

	3% discount rate	7% discount rate	Percent of 3% grand total costs (percent)	Percent of 7% grand total costs (percent)
Surface Water Systems Costs	$41.4	$41.2	53	54
Ground Water Systems Costs	20.3	19.2	26	25
State Costs	1.7	1.7	2	2
Tribal Costs	0.4	0.4	1	0
Total Public	63.8	62.5	81	81
Surface Water Systems Costs	6.4	6.3	8	8
Ground Water Systems Costs	8.5	8.0	11	10
Total Private	15.0	14.3	19	19
Grand total	78.8	76.8	100	100

Note: Detail may not add due to independent rounding. Estimates are discounted to 2003 and given in 2003 dollars.
Source: Exhibits 3.2 and 7.5, USEPA 2005a.

To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates and regulatory alternatives indicated earlier and discussed in more detail in section VI of this preamble, accurately characterize future compliance costs of today's rule.

In analyzing disproportionate impacts, EPA considered the impact on (1) different regions of the United States, (2) State, local, and Tribal governments, (3) urban, rural and other types of communities, and (4) any segment of the private sector. This analysis is presented in Chapter 7of the Economic Analysis (USEPA 2005a). EPA analyzed four regulatory alternatives and selected the least costly of these in accordance with UMRA Section 205.

EPA has determined that the Stage 2 DBPR contains no regulatory requirements that might significantly or uniquely affect small governments. The Stage 2 DBPR affects all size systems. As described in section VII.C, EPA has certified that today's rule will not have a significant economic impact on a substantial number of small entities. Average annual expenditures for small CWSs to comply with the Stage 2 DBPR range from $27.7 to $26.1 million at a 3 and 7 percent discount rate, respectively.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, "Enhancing the Intergovernmental Partnership," EPA has already initiated consultations with the governmental entities affected by this rule. The consultations are described in the proposed rule (68 FR 49654, August 18, 2003).

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. The final rule has one-time costs for implementation of approximately $7.8 million. Thus, Executive Order 13132 does not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA nonetheless specifically solicited comment on the proposed rule from State and local officials and did consult with State and local officials in developing this rule. A description of that consultation can be found in the preamble to the proposed rule, 68 FR 49548, (August 18, 2003).

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 9, 2000), requires EPA to develop "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Under Executive Order 13175, EPA may not issue a regulation that has Tribal 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 Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement.

EPA has concluded that this final rule may have Tribal implications, because it may impose substantial direct compliance costs on Tribal governments, and the Federal government will not provide the funds necessary to pay those costs.

Accordingly, EPA provides the following Tribal summary impact statement as required by section 5(b). EPA provides further detail on Tribal impact in the Economic Analysis (USEPA 2005a). Total Tribal costs are estimated to be approximately $391,773 per year (at a 3 percent discount rate) and this cost is distributed across 755 Tribal systems. The cost for individual systems depend on system size and source water type. Of the 755 Tribes that may be affected in some form by the Stage 2 DBPR, 654 use ground water as a source and 101 systems use surface water or GWUDI. Since the majority of Tribal systems are ground water systems

serving fewer than 500 people, approximately 15.6 percent of all Tribal systems will have to conduct an IDSE. As a result, the Stage 2 DBPR is most likely to have an impact on Tribes using surface water or GWUDI serving more than 500 people.

EPA consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from Tribal officials.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the Executive Order has been met in a meaningful and timely manner. A copy of this certification has been included in the docket for this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under 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.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA nonetheless has reason to believe that the environmental health or safety risk (i.e., the risk associated with DBPs) addressed by this action may have a disproportionate effect on children. EPA believes that the Stage 2 DBPR will result in greater risk reduction for children than for the general population. The results of the assessments are contained in Section VI.I of this preamble and in the Economic Analysis (USEPA 2005a). A copy of all documents has been placed in the public docket for this action.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This determination is based on the following analysis.

The first consideration is whether the Stage 2 DBPR would adversely affect the supply of energy. The Stage 2 DBPR does not regulate power generation, either directly or indirectly. The public and private utilities that the Stage 2 DBPR regulates do not, as a rule, generate power. Further, the cost increases borne by customers of water utilities as a result of the Stage 2 DBPR are a low percentage of the total cost of water, except for a very few small systems that might install advanced technologies that must spread that cost over a narrow customer base. Therefore, the customers that are power generation utilities are unlikely to face any significant effects as a result of the Stage 2 DBPR. In sum, the Stage 2 DBPR does not regulate the supply of energy, does not generally regulate the utilities that supply energy, and is unlikely significantly to affect the customer base of energy suppliers. Thus, the Stage 2 DBPR would not translate into adverse effects on the supply of energy.

The second consideration is whether the Stage 2 DBPR would adversely affect the distribution of energy. The Stage 2 DBPR does not regulate any aspect of energy distribution. The utilities that are regulated by the Stage 2 DBPR already have electrical service. As derived later in this section, the final rule is projected to increase peak electricity demand at water utilities by only 0.009 percent. Therefore, EPA estimates that the existing connections are adequate and that the Stage 2 DBPR has no discernable adverse effect on energy distribution.

The third consideration is whether the Stage 2 DBPR would adversely affect the use of energy. Because some drinking water utilities are expected to add treatment technologies that use electrical power, this potential impact is evaluated in more detail. The analyses that underlay the estimation of costs for the Stage 2 DBPR are national in scope and do not identify specific plants or utilities that may install treatment in response to the rule. As a result, no analysis of the effect on specific energy suppliers is possible with the available data. The approach used to estimate the impact of energy use, therefore, focuses on national-level impacts. The analysis estimates the additional energy use due to the Stage 2 DBPR and compares that analysis to the national levels of power generation in terms of average and peak loads.

The first step in the analysis is to estimate the energy used by the technologies expected to be installed as a result of the Stage 2 DBPR. Energy use is not directly stated in Technologies and Costs for the Final Long Term 2 Enhanced Surface Water Treatment Rule and Final Stage 2 Disinfectants and Disinfection Byproducts Rule (USEPA 2005g), but the annual cost of energy for each technology addition or upgrade necessitated by the Stage 2 DBPR is provided. An estimate of plant-level energy use is derived by dividing the total energy cost per plant for a range of flows by an average national cost of electricity of $0.076/ kilowatt hours per year (kWh/yr) (USDOE 2004a). These calculations are shown in detail in the Economic Analysis (USEPA 2005a). The energy use per plant for each flow range and technology is then multiplied by the number of plants predicted to install each technology in a given flow range. The energy requirements for each flow range are then added to produce a national total. No electricity use is subtracted to account for the technologies that may be replaced by new technologies, resulting in a conservative estimate of the increase in energy use. The incremental national annual energy usage is 0.12 million megawatt-hours (MWh).

According to the U.S. Department of Energy's Information Administration, electricity producers generated 3,848 million MWh of electricity in 2003 (USDOE 2004b). Therefore, even using the highest assumed energy use for the Stage 2 DBPR, the rule when fully implemented would result in only a 0.003 percent increase in annual average energy use.

In addition to average energy use, the impact at times of peak power demand is important. To examine whether increased energy usage might significantly affect the capacity margins of energy suppliers, their peak season generating capacity reserve was compared to an estimate of peak incremental power demand by water utilities.

Both energy use and water use peak in the summer months, so the most significant effects on supply would be seen then. In the summer of 2003, U.S. generation capacity exceeded consumption by 15 percent, or

approximately 160,000 MW (USDOE 2004b). Assuming around-the-clock operation of water treatment plants, the total energy requirement can be divided by 8,760 hours per year to obtain an average power demand of 13.28 MW. A more detailed derivation of this value is shown in the Economic Analysis (USEPA 2005a). Assuming that power demand is proportional to water flow through the plant and that peak flow can be as high as twice the average daily flow during the summer months, about 26.55 MW could be needed for treatment technologies installed to comply with the Stage 2 DBPR. This is only 0.017 percent of the capacity margin available at peak use.

Although EPA recognizes that not all areas have a 15 percent capacity margin and that this margin varies across regions and through time, this analysis reflects the effect of the rule on national energy supply, distribution, and use. While certain areas, notably California, have experienced shortfalls in generating capacity in the recent past, a peak incremental power requirement of 26.55 MW nationwide is not likely to significantly change the energy supply, distribution, or use in any given area. Considering this analysis, EPA has concluded that Stage 2 DBPR will not have any significant effect on the use of energy, based on annual average use and on conditions of peak power demand.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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 standard 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 rulemaking involves technical standards. EPA has decided to use two voluntary consensus methods for HAA5 (Standard Method 6251 B, 1998 in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and Standard Method 6251 B–94, 1994 available at *http://www.standardmethods.org*). In addition to these two consensus methods, EPA is also approving EPA Method 552.3 for HAA5, which also can be used to measure three unregulated HAAs that are not included in the consensus methods. The unregulated HAAs are included in the EPA method because some water systems monitor for them in order to better understand their treatment processes and provide greater public health protection. EPA is approving two voluntary consensus standards for daily monitoring for chlorite (Standard Method 4500–ClO_2 E, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and Standard Method 4500–ClO_2 E–00, 2000, available at *http://www.standardmethods.org*). EPA Method 327.0, Revision 1.1 is also being approved for daily monitoring for both chlorite and chlorine dioxide in order to provide an alternative to the titration procedure that is required in the Standard Methods. EPA is approving a method from American Society for Testing and Materials International for bromate, chlorite and bromide analyses (ASTM D 6581–00, 2000, ASTM International. Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 2001 or any year containing the cited version of the method may be used). EPA is also approving three EPA methods (EPA Methods 317.0 Revision 2.0, 321.8, and 326.0) that provide greater sensitivity and selectivity for bromate than the ASTM consensus standard. These EPA methods are required in order to provide better process control for water systems using ozone in the treatment process and to allow for a reduced monitoring option. EPA Methods 317.0 Revision 2.0 and 326.0 can also be used to determine chlorite and bromide. Today's action approves eight voluntary consensus standards for determining free, combined, and total chlorine (SM 4500–Cl D, SM 4500–Cl F, and 4500–Cl G, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and SM 4500–Cl D–00, SM 4500–Cl F–00, and 4500–Cl G–00, 2000 available at *http://www.standardmethods.org* and ASTM D 1253–86(96), 1996, ASTM International, Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 1996 or any year containing the cited version of the method may be used and ASTM D 1253–03, 2003, ASTM International, Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 2004 or any year containing the cited version of the method may be used). EPA is approving four standards for determining total chlorine (SM 4500–Cl E and SM 4500–Cl I, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and SM 4500–Cl E–00 and SM 4500–Cl I–00, 2000 available at *http://www.standardmethods.org*). Two standards for determining free chlorine are approved in today's rule (SM 4500–Cl H, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and SM 4500–Cl H–00, 2000 available at *http://www.standardmethods.org*). Today's action approves three voluntary consensus standards for measuring chlorine dioxide (4500–ClO_2 D and 4500–ClO_2 E, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and 4500–ClO_2 E–00, 2000 available at *http://www.standardmethods.org*). EPA is approving six standards for determining TOC and DOC (SM 5310 B, SM 5310 C, and SM 5310 D, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and SM 5310 B–00, SM 5310 C–00, and SM 5310 D–00, 2000 available at *http://www.standardmethods.org*). Two standards for determining UV_{254} are approved in today's rule (SM 5910 B, 1998, in the 20th Edition of Standard Methods for the Examination of Water and Wastewater and SM 5910 B–00, 2000 available at *http://www.standardmethods.org*). EPA is also approving EPA Method 415.3 Revision 1.1 for the determination of TOC and SUVA (DOC and UV_{254}). This EPA method contains method performance data that are not available in the consensus standards.

Copies of the ASTM standards may be obtained from the American Society for Testing and Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. The Standard Methods may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations or Low-Income Populations

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. EPA has

considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders. A description of this consultation can be found in the proposed rule (USEPA 2003a).

K. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with Section 1412(d) and (e) of the SDWA, the Agency consulted with the Science Advisory Board, the National Drinking Water Advisory Council (NDWAC), and the Secretary of Health and Human Services on today's rule.

EPA met with the SAB to discuss the Stage 2 DBPR on June 13, 2001 (Washington, DC), September 25–26, 2001 (teleconference), and December 10–12, 2001 (Los Angeles, CA). Written comments from the December 2001 meeting of the SAB addressing the occurrence analysis and risk assessment were generally supportive. SAB comments are discussed in greater detail within the proposal.

EPA met with the NDWAC on November 8, 2001, in Washington, DC to discuss the Stage 2 DBPR proposal. The Advisory Committee generally supported the need for the Stage 2 DBPR based on health and occurrence data, but also stressed the importance of providing flexibility to the systems implementing the rule. The results of these discussions are included in the docket for the proposed rule.

L. Plain Language

Executive Order 12866 requires each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible.

M. Analysis of the Likely Effect of Compliance With the Stage 2 DBPR on the Technical, Managerial, and Financial Capacity of Public Water Systems

Section 1420(d)(3) of SDWA, as amended, requires that, in promulgating a National Primary Drinking Water Regulation (NPDWR), the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, managerial, and financial (TMF) capacity of PWSs. This analysis is described in more detail and can be found in the Economic Analysis (USEPA 2005a). Analyses reflect only the impact of new or revised requirements, as established by the LT2ESWTR; the impacts of previously established requirements on system capacity are not considered.

EPA has defined overall water system capacity as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity encompasses three components: technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. This refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements.

EPA estimated the impact of the Stage 2 DBPR on small and large system capacity as a result of the measures that systems are expected to adopt to meet the requirements of the rule (e.g., selecting monitoring sites for the IDSE, installing/upgrading treatment, operator training, communication with regulators and the service community, etc.). The Stage 2 DBPR may have a substantial impact on the capacity of the 1,743 plants in small systems and 518 plants in large systems that must make changes to their treatment process to meet the Stage 2 DBPR requirements. However, while the impact to these systems is potentially significant, only 3.8 percent of all plants regulated under the Stage 2 DBPR (2,261 of 60,220) will be affected by this requirement. Since individual systems may employ more than one plant, it is likely that fewer than 1,620 systems (3.4 percent of 48,293 systems) will be affected by this requirement. The new IDSE and monitoring requirements are expected to have a small impact on the technical and managerial capacity of small systems, a moderate impact on the financial capacity of some small systems, and a much smaller impact on large systems. The capacity of systems that must conduct an operational evaluation will only be impacted in a minor way, while those systems that must only familiarize themselves with the rule (the large majority of systems) will not face any capacity impact as a result of the Stage 2 DBPR.

N. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 6, 2006.

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List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: December 15, 2005.

Stephen L. Johnson,

Administrator.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended as follows:

■ a. Under the heading "National Primary Drinking Water Regulations Implementation" by adding entries in numerical order for "§ 141.600–141.605, 141.620–141.626, 141.629".

■ b. Under the heading "National Primary Drinking Water Regulations Implementation" by removing entries "§ 142.14(a),142.14(a)–(d)(3)" and adding entries in numerical order for "142.14(a) (1)–(7), 142.14(a)(8), 142.14(b)–(d) and 142.16(m)" as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * *	* *
National Primary Drinking Water Regulations	
* * *	* *
141.600–141.605	2040–0265
141.620–141.626	2040–0265
141.629	2040–0265
National Primary Drinking Water Regulations Implementation	
* * *	* *
142.14(a)(1)–(7)	2040–0265
142.14(a)(8)	2040–0265
142.14(b)–(d)	2040–0090
* * *	* *
142.16(m)	2040–0265

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 4. Section 141.2 is amended by adding, in alphabetical order, definitions for "Combined distribution system", "Consecutive system", "Dual sample sets", "Finished water", "GAC20", "Locational running annual average", and "Wholesale system" and revising the definition of "GAC10" to read as follows:

§ 141.2 Definitions.

* * * * *

Combined distribution system is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

* * * * *

Consecutive system is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

* * * * *

Dual sample set is a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other

sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under subpart U of this part and determining compliance with the TTHM and HAA5 MCLs under subpart V of this part.

* * * * *

Finished water is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (*e.g.*, booster disinfection, addition of corrosion control chemicals).

* * * * *

GAC10 means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with subpart V MCLs under § 141.64(b)(2) shall be 120 days.

GAC20 means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

* * * * *

Locational running annual average (LRAA) is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

* * * * *

Wholesale system is a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

§ 141.12 [Removed]

■ 5. Section 141.12 is removed and reserved.

§ 141.30 [Removed]

■ 6. Section 141.30 is removed.

§ 141.32 [Removed]

■ 7. Section 141.32 is removed and reserved.

■ 8. Section 141.33 is amended by revising the first sentence of paragraph (a) introductory text and adding paragraph (f) to read as follows:

§ 141.33 Record maintenance.

* * * * *

(a) Records of microbiological analyses and turbidity analyses made pursuant to this part shall be kept for not less than 5 years. * * *

* * * * *

(f) Copies of monitoring plans developed pursuant to this part shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under paragraph (a) of this section, except as specified elsewhere in this part.

■ 9. Section 141.53 is amended by revising the table to read as follows:

§ 141.53 Maximum contaminant level goals for disinfection byproducts.

* * * * *

Disinfection byproduct	MCLG (mg/L)
Bromodichloromethane	zero
Bromoform	zero
Bromate	zero
Chlorite	0.8
Chloroform	0.07
Dibromochloromethane	0.06
Dichloroacetic acid	zero
Monochloroacetic acid	0.07
Trichloroacetic acid	0.02

■ 10. Section 141.64 is revised to read as follows:

§ 141.64 Maximum contaminant levels for disinfection byproducts.

(a) *Bromate and chlorite.* The maximum contaminant levels (MCLs) for bromate and chlorite are as follows:

Disinfection byproduct	MCL (mg/L)
Bromate	0.010
Chlorite	1.0

(1) *Compliance dates for CWSs and NTNCWSs.* Subpart H systems serving 10,000 or more persons must comply with this paragraph (a) beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this paragraph (a) beginning January 1, 2004.

(2) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for bromate and chlorite identified in this paragraph (a):

Disinfection byproduct	Best available technology
Bromate	Control of ozone treatment process to reduce production of bromate
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

(b) TTHM and HAA5. (1) Subpart L—RAA compliance. (i) Compliance dates. Subpart H systems serving 10,000 or more persons must comply with this paragraph (b)(1) beginning January 1, 2002. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this paragraph (b)(1) beginning January 1, 2004. All systems must comply with these MCLs until the date specified for subpart V compliance in § 141.620(c).

Disinfection byproduct	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060

(ii) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph (b)(1):

Disinfection byproduct	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5).	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant

(2) Subpart V—LRAA compliance. (i) Compliance dates. The subpart V MCLs for TTHM and HAA5 must be complied with as a locational running annual average at each monitoring location beginning the date specified for subpart V compliance in § 141.620(c).

Disinfection byproduct	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060

(ii) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph (b)(2)

for all systems that disinfect their source water:

Disinfection by-product	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5).	Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff ≤1000 Daltons; or GAC20

(iii) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for TTHM and HAA5 identified in this paragraph (b)(2) for consecutive systems and applies only to the disinfected water that consecutive systems buy or otherwise receive:

Disinfection by-product	Best available technology
Total trihalomethanes (TTHM) and Haloacetic acids (five) (HAA5).	Systems serving ≥10,000: Improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance Systems serving <10,000: Improved distribution system and storage tank management to reduce residence time

■ 11. Section 141.131 is amended as follows:
■ a. By revising paragraph (a),
■ b. By revising paragraphs (b)(1) and (b)(2),
■ c. By revising the table in paragraph (c)(1),
■ d. By revising paragraphs (d)(2), (d)(3), (d)(4)(i), and (d)(4)(ii),
■ e. By adding paragraph (d)(6).

§ 141.131 Analytical requirements.

(a) *General.* (1) Systems must use only the analytical methods specified in this section, or their equivalent as approved by EPA, to demonstrate compliance with the requirements of this subpart and with the requirements of subparts U and V of this part. These methods are effective for compliance monitoring February 16, 1999, unless a different effective date is specified in this section or by the State.

(2) The following documents are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* EPA Method 552.1 is in Methods for the Determination of Organic Compounds in Drinking Water-Supplement II, USEPA, August 1992, EPA/600/R–92/129 (available through National Information Technical Service (NTIS), PB92–207703). EPA Methods 502.2, 524.2, 551.1, and 552.2 are in Methods for the Determination of Organic Compounds in Drinking Water-Supplement III, USEPA, August 1995, EPA/600/R–95/131 (available through NTIS, PB95–261616). EPA Method 300.0 is in Methods for the Determination of Inorganic Substances in Environmental Samples, USEPA, August 1993, EPA/600/R–93/100 (available through NTIS, PB94–121811). EPA Methods 300.1 and 321.8 are in Methods for the Determination of Organic and Inorganic Compounds in Drinking Water, Volume 1, USEPA, August 2000, EPA 815–R–00–014 (available through NTIS, PB2000–106981). EPA Method 317.0, Revision 2.0, "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis," USEPA, July 2001, EPA 815–B–01–001, EPA Method 326.0, Revision 1.0, "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis," USEPA, June 2002, EPA 815–R–03–007, EPA Method 327.0, Revision 1.1, "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry," USEPA, May 2005, EPA 815–R–05–008 and EPA Method 552.3, Revision 1.0, "Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection," USEPA, July 2003, EPA–815–B–03–002 can be accessed and downloaded directly on-line at *http://www.epa.gov/safewater/methods/sourcalt.html.* EPA Method 415.3, Revision 1.1, "Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water," USEPA, February 2005, EPA/600/R–05/055 can be accessed and downloaded directly on-line at *www.epa.gov/nerlcwww/ordmeth.htm.* Standard Methods 4500–Cl D, 4500–Cl E, 4500–Cl F, 4500–Cl G, 4500–Cl H, 4500–Cl I, 4500–ClO_2 D, 4500–ClO_2 E, 6251 B, and 5910 B shall be followed in accordance with Standard Methods for the Examination of Water and Wastewater, 19th or 20th Editions, American Public Health Association, 1995 and 1998, respectively. The cited methods published in either edition may be used. Standard Methods 5310 B, 5310 C, and 5310 D shall be followed in accordance with the Supplement to the 19th Edition of Standard Methods for the Examination of Water and Wastewater, or the Standard Methods for the Examination of Water and Wastewater, 20th Edition, American Public Health Association, 1996 and 1998, respectively. The cited methods published in either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. Standard Methods 4500–Cl D–00, 4500–Cl E–00, 4500–Cl F–00, 4500–Cl G–00, 4500–Cl H–00, 4500–Cl I–00, 4500–ClO_2 E–00, 6251 B–94, 5310 B–00, 5310 C–00, 5310 D–00 and 5910 B–00 are available at *http://www.standardmethods.org* or at EPA's Water Docket. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only Online versions that are IBR-approved. ASTM Methods D 1253–86 and D 1253–86 (Reapproved 1996) shall be followed in accordance with the Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 1996 or any ASTM edition containing the IBR-approved version of the method may be used. ASTM Method D1253–03 shall be followed in accordance with the Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 2004 or any ASTM edition containing the IBR-approved version of the method may be used. ASTM Method D 6581–00 shall be followed in accordance with the Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials International, 2001 or any ASTM edition containing the IBR-approved version of the method may be used; copies may be obtained from the American Society for Testing and

Materials International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(b) Disinfection byproducts. (1) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table:

APPROVED METHODS FOR DISINFECTION BYPRODUCT COMPLIANCE MONITORING

Contaminant and methodology [1]	EPA method	Standard method [2]	SM online [9]	ASTM method [3]
TTHM				
P&T/GC/EICD & PID	502.2 [4]			
P&T/GC/MS	524.2			
LLE/GC/ECD	551.1			
HAA5				
LLE (diazomethane)/GC/ECD		6251 B [5]	6251 B–94	
SPE (acidic methanol)/GC/ECD	552.1 [5]			
LLE (acidic methanol)/GC/ECD	552.2, 552.3			
Bromate				
Ion chromatography	300.1			D 6581–00
Ion chromatography & post column reaction.	317.0 Rev 2.0 [6], 326.0 [6]			
IC/ICP–MS	321.8 [6 7]			
Chlorite				
Amperometric titration		4500–ClO_2 E [8]	4500–ClO_2 E–00 [8]	
Spectrophotometry	327.0 Rev 1.1 [8]			
Ion chromatography	300.0, 300.1, 317.0 Rev 2.0, 326.0.			D 6581–00

[1] P&T = purge and trap; GC = gas chromatography; EICD = electrolytic conductivity detector; PID = photoionization detector; MS = mass spectrometer; LLE = liquid/liquid extraction; ECD = electron capture detector; SPE = solid phase extraction; IC = ion chromatography; ICP–MS = inductively coupled plasma/mass spectrometer.

[2] 19th and 20th editions of Standard Methods for the Examination of Water and Wastewater, 1995 and 1998, respectively, American Public Health Association; either of these editions may be used.

[3] Annual Book of ASTM Standards, 2001 or any year containing the cited version of the method, Vol 11.01.

[4] If TTHMs are the only analytes being measured in the sample, then a PID is not required.

[5] The samples must be extracted within 14 days of sample collection.

[6] Ion chromatography & post column reaction or IC/ICP-MS must be used for monitoring of bromate for purposes of demonstrating eligibility of reduced monitoring, as prescribed in § 141.132(b)(3)(ii).

[7] Samples must be preserved at the time of sampling with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days.

[8] Amperometric titration or spectrophotometry may be used for routine daily monitoring of chlorite at the entrance to the distribution system, as prescribed in § 141.132(b)(2)(i)(A). Ion chromatography must be used for routine monthly monitoring of chlorite and additional monitoring of chlorite in the distribution system, as prescribed in § 141.132(b)(2)(i)(B) and (b)(2)(ii).

[9] The Standard Methods Online version that is approved is indicated by the last two digits in the method number which is the year of approval by the Standard Method Committee. Standard Methods Online are available at *http://www.standardmethods.org.*

(2) Analyses under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the State, except as specified under paragraph (b)(3) of this section. To receive certification to conduct analyses for the DBP contaminants in §§ 141.64, 141.135, and subparts U and V of this part, the laboratory must:

(i) Analyze Performance Evaluation (PE) samples that are acceptable to EPA or the State at least once during each consecutive 12 month period by each method for which the laboratory desires certification.

(ii) Until March 31, 2007, in these analyses of PE samples, the laboratory must achieve quantitative results within the acceptance limit on a minimum of 80% of the analytes included in each PE sample. The acceptance limit is defined as the 95% confidence interval calculated around the mean of the PE study between a maximum and minimum acceptance limit of +/−50% and +/−15% of the study mean.

(iii) Beginning April 1, 2007, the laboratory must achieve quantitative results on the PE sample analyses that are within the following acceptance limits:

DBP	Acceptance limits (percent of true value)	Comments
TTHM		
Chloroform	±20	Laboratory must meet all 4 individual THM acceptance limits in order to successfully pass a PE sample for TTHM
Bromodichloromethane	±20	
Dibromochloromethane	±20	
Bromoform	±20	
HAA5		
Monochloroacetic Acid	±40	Laboratory must meet the acceptance limits for 4 out of 5 of the HAA5 compounds in order to successfully pass a PE sample for HAA5
Dichloroacetic Acid	±40	
Trichloroacetic Acid	±40	
Monobromoacetic Acid	±40	
Dibromoacetic Acid	±40	
Chlorite	±30	

DBP	Acceptance limits (percent of true value)	Comments
Bromate	±30	

(iv) Beginning April 1, 2007, report quantitative data for concentrations at least as low as the ones listed in the following table for all DBP samples analyzed for compliance with §§ 141.64, 141.135, and subparts U and V of this part:

DBP	Minimum reporting level (mg/L) [1]	Comments
TTHM [2]		
Chloroform	0.0010	
Bromodichloromethane	0.0010	
Dibromochloromethane	0.0010	
Bromoform	0.0010	
HAA5 [2]		
Monochloroacetic Acid	0.0020	
Dichloroacetic Acid	0.0010	
Trichloroacetic Acid	0.0010	
Monobromoacetic Acid	0.0010	
Dibromoacetic Acid	0.0010	
Chlorite	0.020	Applicable to monitoring as prescribed in § 141.132(b)(2)(1)(B) and (b)(2)(ii).
Bromate	0.0050 or 0.0010	Laboratories that use EPA Methods 317.0 Revision 2.0, 326.0 or 321.8 must meet a 0.0010 mg/L MRL for bromate.

[1] The calibration curve must encompass the regulatory minimum reporting level (MRL) concentration. Data may be reported for concentrations lower than the regulatory MRL as long as the precision and accuracy criteria are met by analyzing an MRL check standard at the lowest reporting limit chosen by the laboratory. The laboratory must verify the accuracy of the calibration curve at the MRL concentration by analyzing an MRL check standard with a concentration less than or equal to 110% of the MRL with each batch of samples. The measured concentration for the MRL check standard must be ±50% of the expected value, if any field sample in the batch has a concentration less than 5 times the regulatory MRL. Method requirements to analyze higher concentration check standards and meet tighter acceptance criteria for them must be met in addition to the MRL check standard requirement.

[2] When adding the individual trihalomethane or haloacetic acid concentrations to calculate the TTHM or HAA5 concentrations, respectively, a zero is used for any analytical result that is less than the MRL concentration for that DBP, unless otherwise specified by the State.

* * * * *

(c) * * *

(1) * * *

Methodology	SM (19th or 20th ed)	SM Online [2]	ASTM method	EPA method	Residual measured [1]			
					Free Cl_2	Combined Cl_2	Total Cl_2	ClO_2
Amperometric Titration	4500–C D	4500–C D–00	D 1253–86 (96), 03		X	X	X	
Low Level Amperometric Titration.	4500–C E	4500–C E–00					X	
DPD Ferrous Titrimetric	4500–C F	4500–C F–00			X	X	X	
DPD Colorimetric	4500–C G	4500–C G–00			X	X	X	
Syringaldazine (FACTS)	4500–C H	4500–C H–00			X			
Iodometric Electrode	4500–C I	4500–C I–00					X	
DPD	4500–C O_2 D							X
Amperometric Method II	4500–C O_2 E	4500–C O_2 E–00						X
Lissamine Green Spectrophotometric.				327.0 Rev 1.1				X

[1] X indicates method is approved for measuring specified disinfectant residual. Free chlorine or total chlorine may be measured for demonstrating compliance with the chlorine MRDL and combined chlorine, or total chlorine may be measured for demonstrating compliance with the chloramine MRDL.

[2] The Standard Methods Online version that is approved is indicated by the last two digits in the method number which is the year of approval by the Standard Method Committee. Standard Methods Online are available at *http://www.standardmethods.org.*

* * * * *

(d) * * *

(2) *Bromide.* EPA Methods 300.0, 300.1, 317.0 Revision 2.0, 326.0, or ASTM D 6581–00.

(3) *Total Organic Carbon (TOC).* Standard Method 5310 B or 5310 B–00 (High-Temperature Combustion

Method) or Standard Method 5310 C or 5310 C–00 (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method 5310 D or 5310 D–00 (Wet-Oxidation Method) or EPA Method 415.3 Revision 1.1. Inorganic carbon must be removed from the samples prior to analysis. TOC samples may not be filtered prior to analysis. TOC samples must be acidified at the time of sample collection to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within 28 days.

(4) * * *

(i) Dissolved Organic Carbon (DOC). Standard Method 5310 B or 5310 B–00 (High-Temperature Combustion Method) or Standard Method 5310 C or 5310 C–00 (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method 5310 D or 5310 D–00 (Wet-Oxidation Method) or EPA Method 415.3 Revision 1.1. DOC samples must be filtered through the 0.45 µm pore-diameter filter as soon as practical after sampling, not to exceed 48 hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within 28 days of sample collection. Inorganic carbon must be removed from the samples prior to analysis. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: DOC < 0.5 mg/L.

(ii) Ultraviolet Absorption at 254 nm (UV_{254}). Standard Method 5910 B or 5910 B–00 (Ultraviolet Absorption Method) or EPA Method 415.3 Revision 1.1. UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV_{254} samples must be filtered through a 0.45 µm pore-diameter filter. The pH of UV_{254} samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

* * * * *

(6) *Magnesium.* All methods allowed in § 141.23(k)(1) for measuring magnesium.

■ 12. Section 141.132 is amended by:

■ a. Redesignating paragraphs (b)(1)(iii) through (b)(1)(v) as paragraphs (b)(1)(iv) through (b)(1)(vi);

■ b. Adding a new paragraph (b)(1)(iii);

■ c. Revising newly redesignated paragraph (b)(1)(iv); and

■ d. Revising paragraph (b)(3)(ii).

The addition and revisions read as follows:

§ 141.132 Monitoring requirements.

* * * * *

(b) * * *

(1) * * *

(iii) *Monitoring requirements for source water TOC.* In order to qualify for reduced monitoring for TTHM and HAA5 under paragraph (b)(1)(ii) of this section, subpart H systems not monitoring under the provisions of paragraph (d) of this section must take monthly TOC samples every 30 days at a location prior to any treatment, beginning April 1, 2008 or earlier, if specified by the State. In addition to meeting other criteria for reduced monitoring in paragraph (b)(1)(ii) of this section, the source water TOC running annual average must be ≤4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5 under paragraph (b)(1)(ii) of this section, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

(iv) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (b)(1)(i) of this section (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to the increased monitoring identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

* * * * *

(3) ***

(i) ***

(ii) Reduced monitoring.

(A) Until March 31, 2009, systems required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's average source water bromide concentration is less than 0.05 mg/L based on representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based on representative monthly measurements. If the running annual average source water bromide concentration is ≥0.05 mg/L, the system must resume routine monitoring required by paragraph (b)(3)(i) of this section in the following month.

(B) Beginning April 1, 2009, systems may no longer use the provisions of paragraph (b)(3)(ii)(A) of this section to qualify for reduced monitoring. A system required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is ≤0.0025 mg/L based on monthly bromate measurements under paragraph (b)(3)(i) of this section for the most recent four quarters, with samples analyzed using Method 317.0 Revision 2.0, 326.0 or 321.8. If a system has qualified for reduced bromate monitoring under paragraph (b)(3)(ii)(A) of this section, that system may remain on reduced monitoring as long as the running annual average of quarterly bromate samples ≤0.0025 mg/L based on samples analyzed using Method 317.0 Revision 2.0, 326.0, or 321.8. If the running annual average bromate concentration is >0.0025 mg/L, the system must resume routine monitoring required by paragraph (b)(3)(i) of this section.

* * * * *

§ 141.133 [Amended]

■ 13. Section 141.133 is amended in the last sentence of paragraph (d) by revising the reference "§ 141.32" to read "subpart Q of this part".

■ 14. Section 141.135 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 141.135 Treatment technique for control of disinfection byproduct (DBP) precursors.

(a) * * *

(3) * * *

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly according to § 141.131(d)(6) and calculated quarterly as a running annual average.

* * * * *

■ 15. Section 141.151 is amended by revising paragraph (d) to read as follows:

§ 141.151 Purpose and applicability of this subpart.

* * * * *

(d) For the purpose of this subpart, detected means: at or above the levels prescribed by § 141.23(a)(4) for inorganic contaminants, at or above the levels prescribed by § 141.24(f)(7) for the contaminants listed in § 141.61(a), at or above the levels prescribed by § 141.24(h)(18) for the contaminants listed in § 141.61(c), at or above the levels prescribed by § 141.131(b)(2)(iv) for the contaminants or contaminant groups listed in § 141.64, and at or above the levels prescribed by § 141.25(c) for radioactive contaminants.

* * * * *

■ 16. Section 141.153 is amended by revising paragraphs (d)(4)(iv)(B) and (d)(4)(iv)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(iv) * * *

(B) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a monitoring location: the highest average of any of the monitoring locations and the range of all monitoring locations expressed in the same units as the MCL. For the MCLs for TTHM and HAA5 in § 141.64(b)(2), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all locations that exceed the MCL.

(C) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all monitoring locations: the average and range of detection expressed in the same units as the MCL. The system is required to include individual sample results for the IDSE conducted under subpart U of this part when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

* * * * *

Appendix A to Subpart Q [Amended]

■ 17. In Subpart Q, Appendix A is amended as follows:

■ a. In entry I.B.2. in the fifth column, remove the endnote citation "9" and add in its place "11";

■ b. In entry I.B.11. in the fourth column, remove the endnote citation "10" and add in its place "12";

■ c. In entry I.B.12. in the fourth column, remove the endnote citation "10" and add in its place "12";

■ d. In entry I.G. in the first column, remove the endnote citation "11" and add in its place "13";

■ e. In entry I.G.1. in the third column, remove the endnote citation "12" and add in its place "14" and remove the citation in the third column "141.12, 141.64(a)" and in its place add "141.64(b)" (keeping the endnote citation to endnote 14) and in the fifth column remove the citation "141.30" and add in numerical order the citations "141.600–141.605, 141.620–141.629";

■ f. In entry I.G.2. revise the entry "141.64(a)" to read "141.64(b)" and in the fifth column add in numerical order the citations "141.600–141.605, 141.620–141.629".

■ g. In entry I.G.7. in the fourth column, remove the endnote citation "13" and add in its place "15";

■ h. In entry I.G.8. in the second column, remove the endnote citation "14" and add in its place "16";

■ i. In entry II. in the first column, remove the endnote citation "15" and add in its place "17";

■ j. In entry III.A. in the third column, remove the endnote citation "16" and add in its place "18";

■ k. In entry III.B in the third column, remove the endnote citation "17" and add in its place "19";

■ l. In entry IV.E. in the first column, remove the endnote citation "18" and add in its place 20"; and

■ m. In entry III.F in the second column, remove the endnote citation "19" and add in its place "21".

■ 18. In Subpart Q, Appendix A, remove endnote 14 and add in its place, to read as follows: "14.§§ 141.64(b)(1) 141.132(a)–(b) apply until §§ 141.620–141.630 take effect under the schedule in § 141.620(c).

■ 19–20. In Subpart Q, Appendix B is amended as follows:

■ a. In entry G.77. in the third column, remove the endnote citation "16" and add in its place "17";

■ b. In entry H. (the title) in the first column, remove the endnote citation "17" and add in its place "18";

■ c. In entry H.80. in the third column, remove the endnote citations "17, 18" and add in its place "19, 20" and remove the number "0.10/";

■ d. In entry H.81. in the third column, remove the endnote citation "20" and add in its place "21"; and

■ e. In entry H.84. in the second column, remove the endnote citation "21" and add in its place "22" and in the third column remove the endnote citation "22" and add in its place "23".

■ f. Revise endnotes 18 and 19.

The revisions read as follows:

Appendix B to Subpart Q

* * * * *

■ 18. Surface water systems and ground water systems under the direct influence of surface water are regulated under subpart H of 40 CFR 141. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with subpart L DBP MCLs and disinfectant maximum residual disinfectant levels (MRDLs) beginning January 1, 2002. All other community and non-transient non-community systems must comply with subpart L DBP MCLs and disinfectant MRDLs beginning January 1, 2004. Subpart H transient non-community systems serving ≥10,000 that use chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2002. All other transient non-community systems that use chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning January 1, 2004.

■ 19. Community and non-transient non-community systems must comply with subpart V TTHM and HAA5 MCLs of 0.080 mg/L and 0.060 mg/L, respectively (with compliance calculated as a locational running annual average) on the schedule in § 141.620.

* * * * *

■ 21. Part 141 is amended by adding new subpart U to read as follows:

Subpart U—Initial Distribution System Evaluations

Subpart U—Initial Distribution System Evaluations

§ 141.600 General requirements.

(a) The requirements of subpart U of this part constitute national primary drinking water regulations. The regulations in this subpart establish monitoring and other requirements for identifying subpart V compliance monitoring locations for determining compliance with maximum contaminant levels for total

trihalomethanes (TTHM) and haloacetic acids (five)(HAA5). You must use an Initial Distribution System Evaluation (IDSE) to determine locations with representative high TTHM and HAA5 concentrations throughout your distribution system. IDSEs are used in conjunction with, but separate from, subpart L compliance monitoring, to identify and select subpart V compliance monitoring locations.

(b) *Applicability.* You are subject to these requirements if your system is a community water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light; or if your system is a nontransient noncommunity water system that serves at least 10,000 people and uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) *Schedule.* (1) You must comply with the requirements of this subpart on the schedule in the table in this paragraph (c)(1).

If you serve this population	You must submit your standard monitoring plan or system specific study plan [1] or 40/30 certification [2] to the State by or receive very small system waiver from State	You must complete your standard monitoring or system specific study by	You must submit your IDSE report to the State by [3]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system			
(i) ≥100,000	October 1, 2006	September 30, 2008	January 1, 2009.
(ii) 50,000–99,999	April 1, 2007	March 31, 2009	July 1, 2009.
(iii) 10,000–49,999	October 1, 2007	September 30, 2009	January 1, 2010.
(iv) <10,000 (CWS Only).	April 1, 2008	March 31, 2010	July 1, 2010.
Other systems that are part of a combined distribution system			
(v) Wholesale system or consecutive system.	—at the same time as the system with the earliest compliance date in the combined distribution system.	—at the same time as the system with the earliest compliance date in the combined distribution system.	—at the same time as the system with the earliest compliance date in the combined distribution system.

[1] If, within 12 months after the date identified in this column, the State does not approve your plan or notify you that it has not yet completed its review, you may consider the plan that you submitted as approved. You must implement that plan and you must complete standard monitoring or a system specific study no later than the date identified in the third column.

[2] You must submit your 40/30 certification under § 141.603 by the date indicated.

[3] If, within three months after the date identified in this column (nine months after the date identified in this column if you must comply on the schedule in paragraph (c)(1)(iii) of this section), the State does not approve your IDSE report or notify you that it has not yet completed its review, you may consider the report that you submitted as approved and you must implement the recommended subpart V monitoring as required.

(2) For the purpose of the schedule in paragraph (c)(1) of this section, the State may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The State may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) You must conduct standard monitoring that meets the requirements in § 141.601, or a system specific study that meets the requirements in § 141.602, or certify to the State that you meet 40/30 certification criteria under § 141.603, or qualify for a very small system waiver under § 141.604.

(1) You must have taken the full complement of routine TTHM and HAA5 compliance samples required of a system with your population and source water under subpart L of this part (or you must have taken the full complement of reduced TTHM and HAA5 compliance samples required of a system with your population and source water under subpart L if you meet reduced monitoring criteria under subpart L of this part) during the period specified in § 141.603(a) to meet the 40/30 certification criteria in § 141.603. You must have taken TTHM and HAA5 samples under §§ 141.131 and 141.132 to be eligible for the very small system waiver in § 141.604.

(2) If you have not taken the required samples, you must conduct standard monitoring that meets the requirements in § 141.601, or a system specific study that meets the requirements in § 141.602.

(e) You must use only the analytical methods specified in § 141.131, or otherwise approved by EPA for monitoring under this subpart, to demonstrate compliance with the requirements of this subpart.

(f) IDSE results will not be used for the purpose of determining compliance with MCLs in § 141.64.

§ 141.601 Standard monitoring.

(a) *Standard monitoring plan.* Your standard monitoring plan must comply with paragraphs (a)(1) through (a)(4) of this section. You must prepare and submit your standard monitoring plan to the State according to the schedule in § 141.600(c).

(1) Your standard monitoring plan must include a schematic of your distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and all projected subpart L compliance monitoring.

(2) Your standard monitoring plan must include justification of standard monitoring location selection and a summary of data you relied on to justify standard monitoring location selection.

(3) Your standard monitoring plan must specify the population served and system type (subpart H or ground water).

(4) You must retain a complete copy of your standard monitoring plan submitted under this paragraph (a), including any State modification of your standard monitoring plan, for as long as

you are required to retain your IDSE report under paragraph (c)(4) of this section.

(b) *Standard monitoring.* (1) You must monitor as indicated in the table in this paragraph (b)(1). You must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5. You must conduct one monitoring period during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature. You must review available compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or warmest water temperature.

Source water type	Population size category	Monitoring periods and frequency of sampling	Distribution system monitoring locations [1]				
			Total per monitoring period	Near entry points	Average residence time	High TTHM locations	High HAA5 locations
Subpart H							
	<500 consecutive systems	one (during peak historical month) [2].	2	1		1	
	<500 non-consecutive systems		2			1	1
	500–3,300 consecutive systems.	four (every 90 days)	2	1		1	
	500–3,300 non-consecutive systems.		2			1	1
	3,301–9,999		4		1	2	1
	10,000–49,999	six (every 60 days)	8	1	2	3	2
	50,000–249,999		16	3	4	5	4
	250,000–999,999		24	4	6	8	6
	1,000,000–4,999,999		32	6	8	10	8
	≥5,000,000		40	8	10	12	10
Ground Water							
	<500 consecutive systems	one (during peak historical month) [2].	2	1		1	
	<500 non-consecutive systems		2			1	1
	500–9,999	four (every 90 days)	2			1	1
	10,000–99,999		6	1	1	2	2
	100,000–499,999		8	1	1	3	3
	≥500,000		12	2	2	4	4

[1] A dual sample set (i.e., a TTHM and an HAA5 sample) must be taken at each monitoring location during each monitoring period.
[2] The peak historical month is the month with the highest TTHM or HAA5 levels or the warmest water temperature.

(2) You must take samples at locations other than the existing subpart L monitoring locations. Monitoring locations must be distributed throughout the distribution system.

(3) If the number of entry points to the distribution system is fewer than the specified number of entry point monitoring locations, excess entry point samples must be replaced equally at high TTHM and HAA5 locations. If there is an odd extra location number, you must take a sample at a high TTHM location. If the number of entry points to the distribution system is more than the specified number of entry point monitoring locations, you must take samples at entry points to the distribution system having the highest annual water flows.

(4) Your monitoring under this paragraph (b) may not be reduced under the provisions of § 141.29 and the State may not reduce your monitoring using the provisions of § 142.16(m).

(c) *IDSE report.* Your IDSE report must include the elements required in paragraphs (c)(1) through (c)(4) of this section. You must submit your IDSE report to the State according to the schedule in § 141.600(c).

(1) Your IDSE report must include all TTHM and HAA5 analytical results from subpart L compliance monitoring and all standard monitoring conducted during the period of the IDSE as individual analytical results and LRAAs presented in a tabular or spreadsheet format acceptable to the State. If changed from your standard monitoring plan submitted under paragraph (a) of this section, your report must also include a schematic of your distribution system, the population served, and system type (subpart H or ground water).

(2) Your IDSE report must include an explanation of any deviations from your approved standard monitoring plan.

(3) You must recommend and justify subpart V compliance monitoring locations and timing based on the protocol in § 141.605.

(4) You must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your report. If the State modifies the subpart V monitoring requirements that you recommended in your IDSE report or if the State approves alternative monitoring locations, you must keep a copy of the State's notification on file for 10 years after the date of the State's notification. You must make the IDSE report and any State notification available for review by the State or the public.

§ 141.602 System specific studies.

(a) *System specific study plan.* Your system specific study plan must be based on either existing monitoring results as required under paragraph (a)(1) of this section or modeling as required under paragraph (a)(2) of this section. You must prepare and submit your system specific study plan to the State according to the schedule in § 141.600(c).

(1) *Existing monitoring results.* You may comply by submitting monitoring results collected before you are required to begin monitoring under § 141.600(c). The monitoring results and analysis must meet the criteria in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) *Minimum requirements.* (A) TTHM and HAA5 results must be based on samples collected and analyzed in accordance with § 141.131. Samples must be collected no earlier than five years prior to the study plan submission date.

(B) The monitoring locations and frequency must meet the conditions identified in this paragraph (a)(1)(i)(B). Each location must be sampled once during the peak historical month for TTHM levels or HAA5 levels or the month of warmest water temperature for every 12 months of data submitted for that location. Monitoring results must include all subpart L compliance monitoring results plus additional monitoring results as necessary to meet minimum sample requirements.

System Type	Population size category	Number of monitoring locations	Number of samples	
			TTHM	HAA5
Subpart H:				
	<500	3	3	3
	500–3,300	3	9	9
	3,301–9,999	6	36	36
	10,000–49,999	12	72	72
	50,000–249,999	24	144	144
	250,000–999,999	36	216	216
	1,000,000–4,999,999	48	288	288
	≥ 5,000,000	60	360	360
Ground Water:				
	<500	3	3	3
	500–9,999	3	9	9
	10,000–99,999	12	48	48
	100,000–499,999	18	72	72
	≥ 500,000	24	96	96

(ii) *Reporting monitoring results.* You must report the information in this paragraph (a)(1)(ii).

(A) You must report previously collected monitoring results and certify that the reported monitoring results include all compliance and non-compliance results generated during the time period beginning with the first reported result and ending with the most recent subpart L results.

(B) You must certify that the samples were representative of the entire distribution system and that treatment, and distribution system have not changed significantly since the samples were collected.

(C) Your study monitoring plan must include a schematic of your distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring.

(D) Your system specific study plan must specify the population served and system type (subpart H or ground water).

(E) You must retain a complete copy of your system specific study plan submitted under this paragraph (a)(1), including any State modification of your system specific study plan, for as long as you are required to retain your IDSE report under paragraph (b)(5) of this section.

(F) If you submit previously collected data that fully meet the number of samples required under paragraph (a)(1)(i)(B) of this section and the State rejects some of the data, you must either conduct additional monitoring to replace rejected data on a schedule the State approves or conduct standard monitoring under § 141.601.

(2) *Modeling.* You may comply through analysis of an extended period simulation hydraulic model. The extended period simulation hydraulic model and analysis must meet the criteria in this paragraph (a)(2).

(i) *Minimum requirements.* (A) The model must simulate 24 hour variation in demand and show a consistently repeating 24 hour pattern of residence time.

(B) The model must represent the criteria listed in paragraphs (a)(2)(i)(B)(1) through (9) of this section.

(1) 75% of pipe volume;

(2) 50% of pipe length;

(3) All pressure zones;

(4) All 12-inch diameter and larger pipes;

(5) All 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water;

(6) All 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system;

(7) All storage facilities with standard operations represented in the model; and

(8) All active pump stations with controls represented in the model; and

(9) All active control valves.

(C) The model must be calibrated, or have calibration plans, for the current configuration of the distribution system during the period of high TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. All required calibration must be completed no later than 12 months after plan submission.

(ii) *Reporting modeling.* Your system specific study plan must include the information in this paragraph (a)(2)(ii).

(A) Tabular or spreadsheet data demonstrating that the model meets requirements in paragraph (a)(2)(i)(B) of this section.

(B) A description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (*i.e.*, from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time).

(C) Model output showing preliminary 24 hour average residence time predictions throughout the distribution system.

(D) Timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no

less than would be required for the system under standard monitoring in § 141.601 during the historical month of high TTHM. These samples must be taken at locations other than existing subpart L compliance monitoring locations.

(E) Description of how all requirements will be completed no later than 12 months after you submit your system specific study plan.

(F) Schematic of your distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all subpart L compliance monitoring.

(G) Population served and system type (subpart H or ground water).

(H) You must retain a complete copy of your system specific study plan submitted under this paragraph (a)(2), including any State modification of your system specific study plan, for as long as you are required to retain your IDSE report under paragraph (b)(7) of this section.

(iii) If you submit a model that does not fully meet the requirements under paragraph (a)(2) of this section, you must correct the deficiencies and respond to State inquiries concerning the model. If you fail to correct deficiencies or respond to inquiries to the State's satisfaction, you must conduct standard monitoring under § 141.601.

(b) *IDSE report.* Your IDSE report must include the elements required in paragraphs (b)(1) through (b)(6) of this section. You must submit your IDSE report according to the schedule in § 141.600(c).

(1) Your IDSE report must include all TTHM and HAA5 analytical results from subpart L compliance monitoring and all system specific study monitoring conducted during the period of the system specific study presented in a tabular or spreadsheet format acceptable to the State. If changed from your system specific study plan submitted under paragraph (a) of this section, your IDSE report must also include a schematic of your distribution system, the population served, and system type (subpart H or ground water).

(2) If you used the modeling provision under paragraph (a)(2) of this section, you must include final information for the elements described in paragraph (a)(2)(ii) of this section, and a 24-hour time series graph of residence time for each subpart V compliance monitoring location selected.

(3) You must recommend and justify subpart V compliance monitoring locations and timing based on the protocol in § 141.605.

(4) Your IDSE report must include an explanation of any deviations from your approved system specific study plan.

(5) Your IDSE report must include the basis (analytical and modeling results) and justification you used to select the recommended subpart V monitoring locations.

(6) You may submit your IDSE report in lieu of your system specific study plan on the schedule identified in § 141.600(c) for submission of the system specific study plan if you believe that you have the necessary information by the time that the system specific study plan is due. If you elect this approach, your IDSE report must also include all information required under paragraph (a) of this section.

(7) You must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the State modifies the subpart V monitoring requirements that you recommended in your IDSE report or if the State approves alternative monitoring locations, you must keep a copy of the State's notification on file for 10 years after the date of the State's notification. You must make the IDSE report and any State notification available for review by the State or the public.

§ 141.603 40/30 certification.

(a) *Eligibility.* You are eligible for 40/30 certification if you had no TTHM or HAA5 monitoring violations under subpart L of this part and no individual sample exceeded 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 during an eight consecutive calendar quarter period beginning no earlier than the date specified in this paragraph (a).

If your 40/30 certification is due	Then your eligibility for 40/30 certification is based on eight consecutive calendar quarters of subpart L compliance monitoring results beginning no earlier than [1]
(1) October 1, 2006.	January 2004.
(2) April 1, 2007.	January 2004.
(3) October 1, 2007.	January 2005.
(4) April 1, 2008.	January 2005.

[1] Unless you are on reduced monitoring under subpart L of this part and were not required to monitor during the specified period. If you did not monitor during the specified period, you must base your eligibility on compliance samples taken during the 12 months preceding the specified period.

(b) *40/30 certification.* (1) You must certify to your State that every individual compliance sample taken under subpart L of this part during the periods specified in paragraph (a) of this section were ≤0.040 mg/L for TTHM and ≤0.030 mg/L for HAA5, and that you have not had any TTHM or HAA5 monitoring violations during the period specified in paragraph (a) of this section.

(2) The State may require you to submit compliance monitoring results, distribution system schematics, and/or recommended subpart V compliance monitoring locations in addition to your certification. If you fail to submit the requested information, the State may require standard monitoring under § 141.601 or a system specific study under § 141.602.

(3) The State may still require standard monitoring under § 141.601 or a system specific study under § 141.602 even if you meet the criteria in paragraph (a) of this section.

(4) You must retain a complete copy of your certification submitted under this section for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any State notification available for review by the State or the public.

§ 141.604 Very small system waivers.

(a) If you serve fewer than 500 people and you have taken TTHM and HAA5 samples under subpart L of this part, you are not required to comply with this subpart unless the State notifies you that you must conduct standard monitoring under § 141.601 or a system specific study under § 141.602.

(b) If you have not taken TTHM and HAA5 samples under subpart L of this part or if the State notifies you that you must comply with this subpart, you must conduct standard monitoring under § 141.601 or a system specific study under § 141.602.

§ 141.605 Subpart V compliance monitoring location recommendations.

(a) Your IDSE report must include your recommendations and justification for where and during what month(s) TTHM and HAA5 monitoring for subpart V of this part should be conducted. You must base your recommendations on the criteria in paragraphs (b) through (e) of this section.

(b) You must select the number of monitoring locations specified in the table in this paragraph (b). You will use these recommended locations as subpart V routine compliance monitoring locations, unless State requires different

or additional locations. You should distribute locations throughout the distribution system to the extent possible.

Source water type	Population size category	Monitoring frequency [1]	Distribution system monitoring location			
			Total per monitoring period [2]	Highest TTHM locations	Highest HAA5 locations	Existing subpart L compliance locations
Subpart H:						
	<500	per year	2	1	1	.....
	500–3,300	per quarter	2	1	1	
	3,301–9,999	per quarter	2	1	1	.....
	10,000–49,999	per quarter	4	2	1	1
	50,000–249,999	per quarter	8	3	3	2
	250,000–999,999	per quarter	12	5	4	3
	1,000,000–4,999,999	per quarter	16	6	6	4
	≥5,000,000	per quarter	20	8	7	5
Ground water:						
	<500	per year	2	1	1	
	500–9,999	per year	2	1	1	
	10,000–99,999	per quarter	4	2	1	1
	100,000–499,999	per quarter	6	3	2	1
	≥500,000	per quarter	8	3	3	2

[1] All systems must monitor during month of highest DBP concentrations.
[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location, and month, if monitored annually).

(c) You must recommend subpart V compliance monitoring locations based on standard monitoring results, system specific study results, and subpart L compliance monitoring results. You must follow the protocol in paragraphs (c)(1) through (c)(8) of this section. If required to monitor at more than eight locations, you must repeat the protocol as necessary. If you do not have existing subpart L compliance monitoring results or if you do not have enough existing subpart L compliance monitoring results, you must repeat the protocol, skipping the provisions of paragraphs (c)(3) and (c)(7) of this section as necessary, until you have identified the required total number of monitoring locations.

(1) Location with the highest TTHM LRAA not previously selected as a subpart V monitoring location.

(2) Location with the highest HAA5 LRAA not previously selected as a subpart V monitoring location.

(3) Existing subpart L average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest HAA5 LRAA not previously selected as a subpart V monitoring location.

(4) Location with the highest TTHM LRAA not previously selected as a subpart V monitoring location.

(5) Location with the highest TTHM LRAA not previously selected as a subpart V monitoring location.

(6) Location with the highest HAA5 LRAA not previously selected as a subpart V monitoring location.

(7) Existing subpart L average residence time compliance monitoring location (maximum residence time compliance monitoring location for ground water systems) with the highest TTHM LRAA not previously selected as a subpart V monitoring location.

(8) Location with the highest HAA5 LRAA not previously selected as a subpart V monitoring location.

(d) You may recommend locations other than those specified in paragraph (c) of this section if you include a rationale for selecting other locations. If the State approves the alternate locations, you must monitor at these locations to determine compliance under subpart V of this part.

(e) Your recommended schedule must include subpart V monitoring during the peak historical month for TTHM and HAA5 concentration, unless the State approves another month. Once you have identified the peak historical month, and if you are required to conduct routine monitoring at least quarterly, you must schedule subpart V compliance monitoring at a regular frequency of every 90 days or fewer.

■ 20. Part 141 is amended by adding new subpart V to read as follows:

Subpart V—Stage 2 Disinfection Byproducts Requirements

Subpart V—Stage 2 Disinfection Byproducts Requirements

§ 141.620 General requirements.

(a) *General.* The requirements of subpart V of this part constitute national primary drinking water regulations. The regulations in this subpart establish monitoring and other requirements for

achieving compliance with maximum contaminant levels based on locational running annual averages (LRAA) for total trihalomethanes (TTHM) and haloacetic acids (five)(HAA5), and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain consecutive systems.

(b) *Applicability.* You are subject to these requirements if your system is a community water system or a nontransient noncommunity water system that uses a primary or residual disinfectant other than ultraviolet light or delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light.

(c) *Schedule.* You must comply with the requirements in this subpart on the schedule in the following table based on your system type.

If you are this type of system	You must comply with subpart V monitoring by: [1]
Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system	
(1) System serving ≥ 100,000	April 1, 2012.
(2) System serving 50,000–99,999	October 1, 2012.
(3) System serving 10,000–49,999	October 1, 2013.
(4) System serving > 10,000	October 1, 2013 if no Cryptosporidium monitoring is required under § 141.701(a)(4) or October 1, 2014 if Cryptosporidium monitoring is required under § 141.701(a)(4) or (a)(6)
Other systems that are part of a combined distribution system	
(5) Consecutive system or wholesale system	—at the same time as the system with the earliest compliance date in the combined distribution system.

[1] The State may grant up to an additional 24 months for compliance with MCLs and operational evaluaton levels if you require capital improvements to comply with an MCL.

(6) Your monitoring frequency is specified in § 141.621(a)(2).

(i) If you are required to conduct quarterly monitoring, you must begin monitoring in the first full calendar quarter that includes the compliance date in the table in this paragraph (c).

(ii) If you are required to conduct monitoring at a frequency that is less than quarterly, you must begin monitoring in the calendar month recommended in the IDSE report prepared under § 141.601 or § 141.602 or the calendar month identified in the subpart V monitoring plan developed under § 141.622 no later than 12 months after the compliance date in this table.

(7) If you are required to conduct quarterly monitoring, you must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter (or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters). If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(8) For the purpose of the schedule in this paragraph (c), the State may determine that the combined distribution system does not include certain consecutive systems based on factors such as receiving water from a wholesale system only on an emergency basis or receiving only a small percentage and small volume of water from a wholesale system. The State may also determine that the combined distribution system does not include certain wholesale systems based on factors such as delivering water to a consecutive system only on an emergency basis or delivering only a small percentage and small volume of water to a consecutive system.

(d) Monitoring and compliance. (1) Systems required to monitor quarterly. To comply with subpart V MCLs in § 141.64(b)(2), you must calculate LRAAs for TTHM and HAA5 using monitoring results collected under this subpart and determine that each LRAA does not exceed the MCL. If you fail to complete four consecutive quarters of monitoring, you must calculate compliance with the MCL based on the average of the available data from the most recent four quarters. If you take more than one sample per quarter at a monitoring location, you must average all samples taken in the quarter at that location to determine a quarterly average to be used in the LRAA calculation.

(2) Systems required to monitor yearly or less frequently. To determine compliance with subpart V MCLs in § 141.64(b)(2), you must determine that each sample taken is less than the MCL. If any sample exceeds the MCL, you must comply with the requirements of § 141.625. If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(e) *Violation.* You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

§ 141.621 Routine monitoring.

(a) *Monitoring.* (1) If you submitted an IDSE report, you must begin monitoring at the locations and months you have recommended in your IDSE report submitted under § 141.605 following the schedule in § 141.620(c), unless the State requires other locations or additional locations after its review. If you submitted a 40/30 certification under § 141.603 or you qualified for a very small system waiver under § 141.604 or you are a nontransient noncommunity water system serving <10,000, you must monitor at the location(s) and dates identified in your monitoring plan in § 141.132(f), updated as required by § 141.622.

(2) You must monitor at no fewer than the number of locations identified in this paragraph (a)(2).

Source water type	Population size category	Monitoring Frequency [1]	Distribution system monitoring location total per monitoring period [2]
Subpart H:			
	<500	per year	2
	500–3,300	per quarter	2
	3,301–9,999	per quarter	2
	10,000–49,999	per quarter	4
	50,000–249,999	per quarter	8
	250,000–999,999	per quarter	12
	1,000,000–4,999,999	per quarter	16
	≥ 5,000,000	per quarter	20
Ground Water:			
	<500	per year	2
	500–9,999	per year	2
	10,000–99,999	per quarter	4
	100,000–499,999	per quarter	6
	≥ 500,000	per quarter	8

[1] All systems must monitor during month of highest DBP concentrations.
[2] Systems on quarterly monitoring must take dual sample sets every 90 days at each monitoring location, except for subpart H systems serving 500–3,300. Systems on annual monitoring and subpart H systems serving 500–3,300 are required to take individual TTHM and HAA5 samples (instead of a dual sample set) at the locations with the highest TTHM and HAA5 concentrations, respectively. Only one location with a dual sample set per monitoring period is needed if highest TTHM and HAA5 concentrations occur at the same location (and month, if monitored annually).

(3) If you are an undisinfected system that begins using a disinfectant other than UV light after the dates in subpart U of this part for complying with the Initial Distribution System Evaluation requirements, you must consult with the State to identify compliance monitoring locations for this subpart. You must then develop a monitoring plan under § 141.622 that includes those monitoring locations.

(b) Analytical methods. You must use an approved method listed in § 141.131 for TTHM and HAA5 analyses in this subpart. Analyses must be conducted by laboratories that have received certification by EPA or the State as specified in § 141.131.

§ 141.622 Subpart V monitoring plan.

(a)(1) You must develop and implement a monitoring plan to be kept on file for State and public review. The monitoring plan must contain the elements in paragraphs (a)(1)(i) through (a)(1)(iv) of this section and be complete no later than the date you conduct your initial monitoring under this subpart.

(i) Monitoring locations;

(ii) Monitoring dates;

(iii) Compliance calculation procedures; and

(iv) Monitoring plans for any other systems in the combined distribution system if the State has reduced monitoring requirements under the State authority in § 142.16(m).

(2) If you were not required to submit an IDSE report under either § 141.601 or § 141.602, and you do not have sufficient subpart L monitoring locations to identify the required number of subpart V compliance monitoring locations indicated in § 141.605(b), you must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. You must also provide the rationale for identifying the locations as having high levels of TTHM or HAA5. If you have more subpart L monitoring locations than required for subpart V compliance monitoring in § 141.605(b), you must identify which locations you will use for subpart V compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of subpart V compliance monitoring locations have been identified.

(b) If you are a subpart H system serving > 3,300 people, you must submit a copy of your monitoring plan to the State prior to the date you conduct your initial monitoring under this subpart. unless your IDSE report submitted under subpart U of this part contains all the information required by this section.

(c) You may revise your monitoring plan to reflect changes in treatment, distribution system operations and layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, or for State-approved reasons, after consultation with the State regarding the need for changes and the appropriateness of changes. If you change monitoring locations, you must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. The State may also require modifications in your monitoring plan. If you are a subpart H system serving > 3,300 people, you must submit a copy of your modified monitoring plan to the State prior to the date you are required to comply with the revised monitoring plan.

§ 141.623 Reduced monitoring.

(a) You may reduce monitoring to the level specified in the table in this paragraph (a) any time the LRAA is ≤0.040 mg/L for TTHM and ≤0.030 mg/L for HAA5 at all monitoring locations. You may only use data collected under the provisions of this subpart or subpart L of this part to qualify for reduced monitoring. In addition, the source water annual average TOC level, before any treatment, must be ≤4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either § 141.132(b)(1)(iii) or § 141.132(d).

Source water type	Population size category	Monitoring frequency [1]	Distribution system monitoring location per monitoring period
Subpart H:			
	<500		monitoring may not be reduced.
	500–3,300	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	3,301–9,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	10,000–49,999	per quarter	2 dual sample sets at the locations with the highest TTHM and highest HAA5 LRAAs.
	50,000–249,999	per quarter	4 dual sample sets—at the locations with the two highest TTHM and two highest HAA5 LRAAs.
	250,000–999,999	per quarter	6 dual sample sets—at the locations with the three highest TTHM and three highest HAA5 LRAAs.
	1,000,000–4,999,999	per quarter	8 dual sample sets—at the locations with the four highest TTHM and four highest HAA5 LRAAs.
	≥ 5,000,000	per quarter	10 dual sample sets—at the locations with the five highest TTHM and five highest HAA5 LRAAs.
Ground Water:			
	<500	every third year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	500–9,999	per year	1 TTHM and 1 HAA5 sample: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement; 1 dual sample set per year if the highest TTHM and HAA5 measurements occurred at the same location and quarter.
	10,000–99,999	per year	2 dual sample sets: one at the location and during the quarter with the highest TTHM single measurement, one at the location and during the quarter with the highest HAA5 single measurement.
	100,000–499,999	per quarter	2 dual sample sets; at the locations with the highest TTHM and highest HAA5 LRAAs.
	≥ 500,000	per quarter	4 dual sample sets at the locations with the two highest TTHM and two highest HAA5 LRAAs.

[1] Systems on quarterly monitoring must take dual sample sets every 90 days.

(b) You may remain on reduced monitoring as long as the TTHM LRAA ≤0.040 mg/L and the HAA5 LRAA ≤0.030 mg/L at each monitoring location (for systems with quarterly reduced monitoring) or each TTHM sample ≤0.060 mg/L and each HAA5 sample ≤0.045 mg/L (for systems with annual or less frequent monitoring). In addition, the source water annual average TOC level, before any treatment, must be ≤4.0 mg/L at each treatment plant treating surface water or ground water under the direct influence of surface water, based on monitoring conducted under either § 141.132(b)(1)(iii) or § 141.132(d).

(c) If the LRAA based on quarterly monitoring at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 or if the annual (or less frequent) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or if the source water annual average TOC level, before any treatment, >4.0 mg/L at any treatment plant treating surface water or ground water under the direct influence of surface water, you must resume routine monitoring under § 141.621 or begin increased monitoring if § 141.625 applies.

(d) The State may return your system to routine monitoring at the State's discretion.

§ 141.624 Additional requirements for consecutive systems.

If you are a consecutive system that does not add a disinfectant but delivers water that has been treated with a primary or residual disinfectant other than ultraviolet light, you must comply with analytical and monitoring requirements for chlorine and chloramines in § 141.131 (c) and § 141.132(c)(1) and the compliance requirements in § 141.133(c)(1) beginning April 1, 2009, unless required earlier by the State, and report monitoring results under § 141.134(c).

§ 141.625 Conditions requiring increased monitoring.

(a) If you are required to monitor at a particular location annually or less frequently than annually under § 141.621 or § 141.623, you must increase monitoring to dual sample sets once per quarter (taken every 90 days) at all locations if a TTHM sample is >0.080 mg/L or a HAA5 sample is >0.060 mg/L at any location.

(b) You are in violation of the MCL when the LRAA exceeds the subpart V MCLs in § 141.64(b)(2), calculated based on four consecutive quarters of monitoring (or the LRAA calculated based on fewer than four quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters). You are in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if you fail to monitor.

(c) You may return to routine monitoring once you have conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is ≤0.060 mg/L for TTHM and ≤0.045 mg/L for HAA5.

§ 141.626 Operational evaluation levels.

(a) You have exceeded the operational evaluation level at any monitoring location where the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average, exceeds 0.080 mg/L, or where the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average, exceeds 0.060 mg/L.

(b)(1) If you exceed the operational evaluation level, you must conduct an operational evaluation and submit a written report of the evaluation to the State no later than 90 days after being notified of the analytical result that causes you to exceed the operational evaluation level. The written report must be made available to the public upon request.

(2) Your operational evaluation must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation and what steps could be considered to minimize future exceedences.

(i) You may request and the State may allow you to limit the scope of your evaluation if you are able to identify the cause of the operational evaluation level exceedance.

(ii) Your request to limit the scope of the evaluation does not extend the schedule in paragraph (b)(1) of this section for submitting the written report. The State must approve this limited scope of evaluation in writing and you must keep that approval with the completed report.

§ 141.627 Requirements for remaining on reduced TTHM and HAA5 monitoring based on subpart L results.

You may remain on reduced monitoring after the dates identified in § 141.620(c) for compliance with this subpart only if you qualify for a 40/30 certification under § 141.603 or have received a very small system waiver under § 141.604, plus you meet the reduced monitoring criteria in § 141.623(a), and you do not change or add monitoring locations from those used for compliance monitoring under subpart L of this part. If your monitoring locations under this subpart differ from your monitoring locations under subpart L of this part, you may not remain on reduced monitoring after the dates identified in § 141.620(c) for compliance with this subpart.

§ 141.628 Requirements for remaining on increased TTHM and HAA5 monitoring based on subpart L results.

If you were on increased monitoring under § 141.132(b)(1), you must remain on increased monitoring until you qualify for a return to routine monitoring under § 141.625(c). You must conduct increased monitoring under § 141.625 at the monitoring locations in the monitoring plan developed under § 141.622 beginning at the date identified in § 141.620(c) for compliance with this subpart and remain on increased monitoring until you qualify for a return to routine monitoring under § 141.625(c).

§ 141.629 Reporting and recordkeeping requirements.

(a) *Reporting.* (1) You must report the following information for each monitoring location to the State within 10 days of the end of any quarter in which monitoring is required:

(i) Number of samples taken during the last quarter.

(ii) Date and results of each sample taken during the last quarter.

(iii) Arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter. If the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, you must report this information to the State as part of the first report due following the compliance date or anytime thereafter that this determination is made. If you are required to conduct monitoring at a frequency that is less than quarterly, you must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless you are required to conduct increased monitoring under § 141.625.

(iv) Whether, based on § 141.64(b)(2) and this subpart, the MCL was violated at any monitoring location.

(v) Any operational evaluation levels that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(2) If you are a subpart H system seeking to qualify for or remain on reduced TTHM/HAA5 monitoring, you must report the following source water TOC information for each treatment plant that treats surface water or ground water under the direct influence of surface water to the State within 10 days of the end of any quarter in which monitoring is required:

(i) The number of source water TOC samples taken each month during last quarter.

(ii) The date and result of each sample taken during last quarter.

(iii) The quarterly average of monthly samples taken during last quarter or the result of the quarterly sample.

(iv) The running annual average (RAA) of quarterly averages from the past four quarters.

(v) Whether the RAA exceeded 4.0 mg/L.

(3) The State may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information

(b) *Recordkeeping.* You must retain any subpart V monitoring plans and your subpart V monitoring results as required by § 141.33.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 21. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

■ 22. Section 142.14 is amended by adding paragraph (a)(8) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(8) Any decisions made pursuant to the provisions of 40 CFR part 141, subparts U and V of this part.

(i) IDSE monitoring plans, plus any modifications required by the State, must be kept until replaced by approved IDSE reports.

(ii) IDSE reports and 40/30 certifications, plus any modifications

required by the State, must be kept until replaced or revised in their entirety.

(iii) Operational evaluations submitted by a system must be kept for 10 years following submission.

* * * * *

■ 23. Section 142.16 is amended by adding paragraph (m) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(m) *Requirements for States to adopt 40 CFR part 141, subparts U and V.* In addition to the general primacy requirements elsewhere in this part, including the requirements that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subparts U and V, must contain a description of how the State will implement a procedure for addressing modification of wholesale system and consecutive system monitoring on a case-by-case basis for part 141 subpart V outside the provisions of § 141.29 of this chapter, if the State elects to use such an authority. The procedure must ensure that all systems have at least one compliance monitoring location.

* * * * *

[FR Doc. 06–3 Filed 1–3–06; 8:45 am]

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Federal Register

Wednesday,
January 4, 2006

Part III

Department of the Treasury

31 CFR Part 103
Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network is issuing this final rule to implement the requirements contained in section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 312 requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. This final rule supercedes an interim final rule we issued on July 23, 2002. The interim final rule temporarily deferred application of the requirements contained in section 312 for certain financial institutions and provided guidance, pending issuance of a final rule, to those financial institutions for which compliance with section 312 was not deferred. We are publishing elsewhere in this separate part of the **Federal Register** a Notice of Proposed Rulemaking implementing section 312, and focusing exclusively on enhanced due diligence requirements.

DATES: This final rule is effective February 3, 2006.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

Section 312 of the Act amended the Bank Secrecy Act [1] to add new subsection (i) to 31 U.S.C. 5318. This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for a non-U.S. person to subject such accounts to certain anti-money laundering measures. In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through these accounts.

In addition to the general due diligence requirements, which apply to all correspondent accounts for non-U.S. persons, section 5318(i)(2) specifies additional standards for correspondent accounts maintained for certain foreign banks. These additional standards apply to correspondent accounts maintained for a foreign bank operating under an offshore banking license, under a license issued by a country designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States concurs, or under a license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns. A financial institution must take reasonable steps to: (1) Conduct enhanced scrutiny of a correspondent account maintained for or on behalf of such a foreign bank to guard against money laundering and to report suspicious activity; (2) ascertain whether such a foreign bank provides correspondent accounts to other foreign banks and, if so, to conduct appropriate due diligence; and (3) identify the owners of such a foreign bank if its shares are not publicly traded.

Section 5318(i) also sets forth minimum due diligence requirements for private banking accounts for non-U.S. persons. Specifically, a covered financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, private banking accounts, as necessary to guard against money laundering and to report suspicious transactions. The institution must also conduct enhanced scrutiny of private banking accounts requested or maintained for or on behalf of senior foreign political figures (which includes family members or close associates). Enhanced scrutiny must be reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

A. The 2002 Proposal

On May 30, 2002, we published in the **Federal Register** a notice of proposed rulemaking (2002 Proposal) to implement section 5318(i).[2] In the proposed rule, we sought to take the statutory mandate of section 5318(i) and to translate it into specific regulatory directives for financial institutions to apply. Following the statute, the rule we proposed required certain U.S. financial institutions to apply due diligence and enhanced due diligence procedures to foreign financial institutions [3] that maintain correspondent accounts as well as to non-U.S. persons who establish private banking accounts in the United States. The 2002 Proposal set forth a series of due diligence procedures that financial institutions covered by the rule may, and in some instances must, apply to correspondent accounts and private banking accounts for non-U.S. persons.

B. The Interim Final Rule

We received comments in response to the 2002 Proposal that raised many concerns regarding the numerous definitions in the 2002 Proposal, the scope of the requirements of this provision, and the institutions that would be subject to them. Section 312(b)(2) of the Act provides that section 5318(i) of the Bank Secrecy Act took effect on July 23, 2002, regardless of whether final rules had been issued by that date. In order to have adequate time to review the comments, to determine the appropriate resolution of the many issues raised, and to give clear directions to the affected financial institutions, we issued an interim final rule (the Interim Rule) [4] on July 23, 2002, and exercised our authority under 31 U.S.C. 5318(a)(6) to defer temporarily the application of 31 U.S.C. 5318(i) to certain financial institutions. For those financial institutions that were not subject to the deferral, we set forth interim guidance for compliance with the statute by delineating the scope of coverage, duties, and obligations under that provision, pending issuance of a final rule.

C. Consultation With Federal Functional Regulators

Section 312(b) of the Act provides that the Secretary of the Treasury (Secretary) shall issue implementing regulations under this section "in consultation with the appropriate federal functional regulators (as defined

[1] Bank Secrecy Act, Pub. L. 91–508 (codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1957–1959, and 31 U.S.C. 5311–5314 and 5316–5332).

[2] Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts, 67 FR 37736.

[3] Foreign financial institutions were defined to include foreign banks and any other foreign person that, if organized in the United States, would be required to establish an anti-money laundering program pursuant to 31 CFR 103.120 to 103.169.

[4] Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts, 67 FR 48348.

in section 509 of the Gramm-Leach-Bliley Act) of the affected financial institutions."[5] The 2002 Proposal was issued in consultation with staff at all of these federal functional regulators. The provisions of this final rule also reflect consultation with each of the federal functional regulators or their staff.

D. Further Notice of Proposed Rulemaking

Section 5318(i)(2) directs covered financial institutions to establish procedures for conducting enhanced due diligence with regard to correspondent accounts established or maintained for certain categories of foreign banks. In light of the extensive comments received, we are proposing a different approach toward the implementation of this provision than that set forth in the 2002 Proposal. To ensure adequate notice and opportunity for comment, we have re-noticed the regulation implementing the enhanced due diligence portion of section 312 with regard to correspondent accounts in its entirety. The proposed rulemaking is published elsewhere in this separate part of the **Federal Register.** Until a final rule is published and becomes effective, banks, savings associations, and federally insured credit unions must continue to apply the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2), while securities broker-dealers, futures commission merchants, introducing brokers, mutual funds, and trust banks and trust companies that have a federal regulator, remain exempt from such requirements.

II. Summary of Comments

We received 33 comments regarding the 2002 Proposal. Commenters included U.S. banks, securities broker-dealers, other financial institutions, foreign banks, trade associations representing all the foregoing, a self-regulatory organization, an association of state banking supervisors, and a state gaming commission. Eleven financial institution trade associations jointly signed one of the comments. We also received a joint comment from three members of Congress.[6]

With respect to the correspondent account provisions, the greatest number of comments concerned the definition of correspondent account and the prescribed due diligence requirements for such accounts. Commenters also raised questions about the definitions of covered financial institution and foreign financial institution, as well as the enhanced due diligence requirements for correspondent accounts for certain foreign banks. With respect to the proposed provisions concerning private banking accounts, commenters raised concerns about the definitions of beneficial owner, private banking account, and senior foreign political figure, and sought clarification regarding the nature and extent of the due diligence required for these accounts. Many commenters also addressed the required timing for compliance with the various provisions. These issues and their resolution are discussed below in the section-by-section analysis.

III. Section-by-Section Analysis

A. Section 103.175—Definitions Relating to Correspondent Accounts

1. *Correspondent account.* The term correspondent account, as used in section 5318(i), is defined by reference to the definition in 31 U.S.C. 5318A, as added by section 311 of the Act. The definition in the 2002 Proposal was taken verbatim from section 5318A(e)(1)(B), which defines a correspondent account as "an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution."

Many commenters found the definition to be overly broad, extending beyond the commonly understood meaning of correspondent account (and even beyond the meaning of the term account). They objected to the phrase "or handle other financial transactions related to such institution" as potentially bringing under the rule not only every kind of account maintained for foreign financial institutions, but also any transaction performed by a covered institution on behalf of a foreign institution.[7] According to these commenters, adopting such an overly broad definition would be counterproductive, requiring U.S. financial institutions to devote limited resources to a broad range of accounts and transactions regardless of the level of risk associated with them. Some commenters urged us to narrow the definition of correspondent account to those accounts used to deposit or transfer customer funds. Other commenters argued that the definition should specifically exclude certain types of accounts that do not pose a meaningful risk of money laundering, including limited purpose accounts through which funds are received and disbursed under defined conditions to identified parties such as: escrow, clearing, and custody accounts; proprietary accounts where the foreign financial institution is acting as principal, such as foreign exchange accounts; and accounts held for foreign financial institutions subject to a robust anti-money laundering regime.

The congressional commenters urged us to retain the broad definition of correspondent account, stating that all categories of accounts falling within the definition should receive an appropriate level of due diligence.

After considering these comments, we have decided that the statutory definition of correspondent account contained in the 2002 Proposal is, in substance, appropriate for the final rule as well. The definition of a correspondent account under this final rule mirrors the definition used in the section 313/319 Rule, although additional U.S. financial institutions are subject to this final rule.[8] We are aware of the burden resulting from the application of this broad definition, and we acknowledge that accounts used to hold, transfer, or invest customer funds represent a greater money laundering risk than proprietary accounts or accounts used for certain specific purposes, such as custody accounts or escrow accounts. Nevertheless, we have concluded that a broad definition is

[5] Section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809) defines the federal functional regulators to include the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, and the Securities and Exchange Commission. We also consulted with the Commodity Futures Trading Commission.

[6] Comments may be inspected at the Financial Crimes Enforcement Network reading room in Washington, DC between 10 a.m. and 4 p.m. Persons wishing to inspect comments submitted must request an appointment by telephone at (202) 354–6400 (not a toll-free number). The comment letters are also available on our Web site at *http://www.fincen.gov/reg_312commentsA.html.*

[7] Commenters representing depository institutions and securities broker-dealers in many cases reiterated the comments submitted in response to the proposed rule implementing sections 313 and 319(b) of the Act. See Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks; 67 FR 60562, 60563–60564 (Sept. 26, 2002) (hereinafter "section 313/319 Rule").

[8] In this final rule we have made technical changes to conform the definition of correspondent account for purposes of this rule with the definition for purposes of the section 313/319 Rule. The definition for purposes of this final rule includes the phrase "or other disbursements" after "payments," and the definition for purposes of the section 313/319 Rule is amended by deleting the redundant words "a correspondent account is" and the unnecessary words "by a covered financial institution." Also, the definition from the section 313/319 Rule, which is limited to accounts for foreign banks, applies to paragraphs 103.176(b) and (c) of the final rule, which relate solely to accounts for foreign banks.

appropriate. Limiting the definition would undermine the purpose of the statute by eliminating from the scope of this rule a wide range of account relationships that may pose money laundering risks. Moreover, it may be difficult in some situations to know with certainty whether an account the covered financial institution believes to be proprietary is being used for customer transactions.[9]

We believe that the better approach is to retain the broad statutory definition of correspondent account while modifying the due diligence requirements under the final rule to be more risk-based in nature. This is in accord with the fact that many of the commenters, including the congressional commenters, supported the need for a risk-based due diligence program. This approach should provide covered financial institutions sufficient flexibility to allocate resources and their due diligence efforts in an appropriate manner consistent with the statutory goal.

We also understand that the statutory definition of a correspondent account could create uncertainty as to the types of relationships that are covered, particularly for non-bank covered financial institutions. The term correspondent account does not have an established meaning outside of the banking industry, nor does the statute define the term account for those institutions. Instead, it requires the term to be defined by regulation.[10]

Accordingly, in compliance with the statutory mandate, and to provide additional clarity as to the scope of the term correspondent account, we have added to the final rule specific definitions for the term account as they apply to the various non-bank covered financial institutions that are based on the definitions contained in the final rules issued under 31 U.S.C. 5318(l). When read in conjunction with the correspondent account definition, the industry-specific account definitions should give greater direction to covered financial institutions as to the types and scope of the relationships subject to this rule by addressing the functional differences among them. In addition, these account definitions, discussed in detail below under "Account," make it clear that this rule does not apply to one-time, isolated, or infrequent transactions.

2. *Covered financial institution.* The 2002 Proposal defined covered financial institution to mean insured depository institutions (and their foreign branches), U.S. branches and agencies of foreign banks, Edge Act corporations, securities broker-dealers, and all other financial institutions subject to an anti-money laundering program requirement under the Bank Secrecy Act, which at that time included futures commission merchants and introducing brokers, mutual funds, certain money services businesses, casinos, and operators of credit card systems.[11] The 2002 Proposal also stated that, as additional financial institutions become subject to an anti-money laundering program requirement under 31 U.S.C. 5318(h), they would be included in the definition of covered financial institution.

As discussed in greater detail below, we have decided to limit the scope of covered financial institutions to those institutions that we believe offer correspondent services to foreign financial institutions. Those covered by this rule include federally regulated banks, savings associations, credit unions, and trust companies subject to an anti-money laundering program requirement; branches and agencies of foreign banks; Edge Act corporations; securities broker-dealers; futures commission merchants; introducing brokers; and mutual funds. Those not covered by the rule include foreign branches of insured depository institutions (which are defined as foreign banks under the final rule), money services businesses, casinos, and operators of credit card systems.

- Banking institutions.

The banking institutions that addressed this definition urged us to remove their foreign branches from the definition. We agree that this change is appropriate for the reasons discussed in the section 313/319 Rule. These include the plain language of the statute, the historical approach taken in other Bank Secrecy Act rules, and the anti-competitive impact on foreign branches that could result from their inclusion.[12] Thus, consistent with the definition of foreign bank used in the section 313/319 Rule, for purposes of this rule, foreign branches of U.S. banks will be treated as foreign banks rather than as covered financial institutions.

We noted in the Interim Rule that we were evaluating whether to include uninsured national trust banks, non-federally regulated, state-chartered uninsured trust companies and trust banks, and non-federally insured credit unions under the rule, to the extent that these entities maintain correspondent accounts for foreign financial institutions or private banking accounts for non-U.S. persons.[13] We have decided to include, as covered financial institutions, uninsured trust banks and trust companies that are federally regulated and that are subject to an anti-money laundering program requirement. As for the remaining types of banking institutions, we do not believe that it is appropriate to subject them to the provisions of this rule until they are required to have anti-money laundering programs. We expect to issue in the future a proposed rule requiring credit unions, and trust companies that do not have a federal functional regulator, to establish anti-money laundering programs.[14] While we do not anticipate that a large number of these financial institutions conduct the types of international business or offer the types of accounts that would be affected by this rule, we will nonetheless amend this rule to include those institutions upon adoption of any final rule requiring those institutions to establish anti-money laundering programs.

For banks, correspondent accounts established on behalf of foreign financial institutions include any transaction account, savings account, asset account or account involving an extension of credit, as well as any other relationship with a foreign financial institution to provide ongoing services. These correspondent accounts include, but are not limited to, accounts to purchase, sell, lend, or otherwise hold securities, including securities repurchase arrangements; accounts that clear and settle securities transactions for clients; "due to" accounts; accounts for trading foreign currency; foreign exchange contracts; custody accounts for holding securities or other assets in connection with securities transactions as collateral; and over-the-counter derivatives contracts. These accounts are included even if the U.S. bank does not maintain a deposit account for the

[9] For example, although commenters argued that proprietary correspondent accounts where the foreign bank or institution is acting as principal should be excluded as being low risk for money laundering, these proprietary accounts can and have been abused to facilitate money laundering by commingling bank funds with individual customer funds in order to portray an individual's funds and account activity as being that of the foreign institution. See Minority Report on Correspondent Banking, *infra* note 24, Part IV, discussing the case of Guardian Bank and Trust.

[10] Section 311(e)(2) of the Act requires the Secretary to define by regulation the term "account" for non-bank financial institutions subject to sections 311, 312, and 313 of the Act. See 31 U.S.C. 5318A(e)(2).

[11] 2002 Proposal, *supra* note 2.

[12] Section 313/319 Rule, *supra* note 7, at 60565.

[13] Interim Rule, *supra* note 4, at 48349.

[14] These types of institutions are included in the definition of bank in the section 326 customer identification rule and are therefore required to establish customer identification programs. See 31 CFR 103.121(a)(2)(ii), and the related analysis at 68 FR 25090, 25109 (May 9, 2003).

foreign bank or other foreign financial institution.[15]

• Non-bank financial institutions.

Several commenters urged us to exclude from the proposed definition certain types of financial institutions, including mutual funds, non-bank funds transmitters, loan or finance companies, casinos, and credit card operators. In addition, several commenters objected that the 2002 Proposal was open-ended, extending this rule to additional financial institutions when they become subject to an anti-money laundering program requirement. The congressional comment, on the other hand, stated that the correspondent account definition in the Act was intentionally broad to ensure that the relationships maintained by a wide spectrum of U.S. financial institutions are subject to the statute's requirements.

The application of the correspondent account definition to non-bank financial institutions is one of the most difficult interpretative issues in this rulemaking. Because the Act has taken a term—correspondent account—that has been associated with the banking industry, and has extended it to other account and account-like relationships maintained by various financial institutions, the term's application to non-bank financial institutions is not readily apparent.

The goal of section 312 is to help prevent money laundering through accounts that give foreign financial institutions a base for moving funds through the U.S. financial system.[16] Thus, the non-bank financial institutions subject to the final rule should be those that offer accounts that provide foreign financial institutions a conduit for engaging in ongoing transactions in the U.S. financial system either on their own behalf or for their customers. Based on a review of the financial institutions identified in the Bank Secrecy Act, we have concluded that, for purposes of this rule, the financial institutions that offer customers correspondent accounts (as that term is defined in the Act) include, in addition to depository institutions: securities broker-dealers, Edge Act corporations, mutual funds, and futures commission merchants and introducing brokers.[17]

Securities broker-dealers are defined as covered financial institutions under section 313 of the Act and are subject to this final rule. Securities broker-dealers maintain accounts for foreign financial institutions to engage in securities transactions, funds transfers, or other financial transactions, whether for the financial institution as principal or for its customers. Such accounts, which would constitute correspondent accounts under the final rule, include: (1) Accounts to purchase, sell, lend, or otherwise hold securities, including securities repurchase arrangements; (2) prime brokerage accounts that clear and settle securities transactions for clients; (3) accounts for trading foreign currency; (4) custody accounts for holding securities or other assets in connection with securities transactions as collateral; and (5) over-the-counter derivatives contracts.

Mutual funds are also included as covered financial institutions under this rule. We understand that mutual funds maintain accounts for foreign financial institutions (including foreign banks and foreign securities firms) in which these foreign financial institutions may hold investments in such mutual funds as principals or for their customers, and which the foreign financial institution may use to make payments or to handle other financial transactions on the foreign institution's behalf. Therefore, we have determined that such accounts have sufficient similarities to correspondent accounts of banks that these entities also should be subject to the final rule.[18]

For futures commission merchants and introducing brokers, a correspondent account would include accounts for foreign financial institutions to engage in futures or commodity options transactions, funds transfers, or other financial transactions, including accounts for trading foreign currency and over-the-counter derivatives transactions, whether for the financial institution as principal or for its customers.[19] Such relationships can operate similarly to correspondent accounts of banks and securities broker-dealers in that they can be used to receive deposits from or make payments on behalf of foreign financial institutions. It is, therefore, appropriate to include these institutions as covered financial institutions in the final rule.

In both the securities and commodities context, introducing brokers have been included as covered financial institutions. We anticipate that introducing brokers may share accounts with clearing brokers and may realize efficiencies by apportioning functions associated with a due diligence program under the final section 312 rule pursuant to an agreement. To this end, these firms may consult and share information with each other to fulfill their due diligence obligations under this section.[20] Nonetheless, each financial institution is responsible for ensuring that the requirements of this rule are met.

We do not believe that the other financial institutions identified in the 2002 Proposal offer accounts that fall within the correspondent account definition. A commenter representing loan or finance companies stated that the definition of correspondent account should not include accounts payable or accounts receivable maintained for the purpose of recording loan and lease payments. We agree. Loan or finance companies that extend credit to foreign financial institutions would obviously maintain accounts receivable for such customers, but these are accounting entries that do not enable a loan or finance company to receive deposits, make payments, or handle other financial transactions on behalf of a foreign financial institution.

A commenter representing an operator of a credit card system noted that the industry does not maintain correspondent accounts and recommended that we exclude operators of credit card systems from the scope of the rule. We have decided that this is an appropriate change to make. Credit card operators, as described in the interim final rule establishing anti-money laundering programs for credit card operators, serve primarily as a clearinghouse through which debts are settled and payments are made or received. Credit card system operators

[15] We note that accounts maintained by foreign banks for covered financial institutions are not correspondent accounts subject to this rule, regardless of whether there are credit balances in such accounts.

[16] See 147 Cong. Rec. S10990, 11035 (Oct. 25, 2001) (statement of Sen. Levin).

[17] As set forth in the final rule, the foreign branches of these entities are treated as foreign financial institutions.

[18] Closed-end investment companies, as defined in section 5(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(2)), are not included as covered financial institutions under this rule.

[19] Although orders for futures and options transactions may be transmitted through an introducing broker, the funds relating to introduced accounts are held with a futures commission merchant. Monthly confirmation statements reflecting such transactions must be issued by the futures commission merchant. Nevertheless, introducing brokers can play an important role in preventing money laundering in the futures industry because they are in a position to know the identity of customers they introduce to futures commission merchants and to perform due diligence on such customers, including monitoring trading activity (and are subject to suspicious activity reporting requirements) (see 31 CFR 103.17).

[20] For example, 31 CFR 103.110 sets forth voluntary procedures for information sharing among Bank Secrecy Act -defined financial institutions, which, if followed, entitle them to a safe harbor from liability arising under Federal, State, or local law or contract for such information sharing.

generally do not receive deposits or make payments; instead, the issuing and acquiring banks process, handle, and transfer funds in connection with the use of the credit card. Thus, we have determined that credit card operators do not have correspondent accounts and are not covered financial institutions for purposes of this rule.[21]

A state gaming commission commented that casinos offer various accounts to individual customers, but do not offer correspondent accounts. The commission recommended that casinos be excluded from the rule. We agree with this analysis, and have excluded casinos from the rule.

Finally, upon further consideration, we have decided to exclude money services businesses from the definition of a covered financial institution. Under existing Bank Secrecy Act regulations, money services businesses comprise five distinct types of financial services providers: (1) Currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value; (4) sellers or redeemers of traveler's checks, money orders, or stored value; and (5) money transmitters.[22] Money services businesses in the first four categories do not maintain account relationships with foreign financial institutions. They do not hold, transfer or transmit the funds of foreign financial institutions and/or their customers and, thus, are outside the scope of the definition of correspondent account adopted herein. With respect to money transmitters, we have determined that money transmitters' methods of operation and the attendant risks with respect to foreign financial institutions and their customers differ sufficiently from the concept and definition of a correspondent account envisioned by the statute and this rule that their inclusion would not achieve the desired result. Rather than attempting to equate the relationship between two money transmitters to the concept of a correspondent account, we instead have previously issued guidance which addressed the specific risks posed by the international flow of funds through money services businesses. Using this more precisely targeted tool, discussed below, we expect to achieve the same desired results.

[21] Operators of credit card systems are subject to an anti-money laundering program requirement under section 352 of the Act that is specifically tailored to require increased due diligence regarding any foreign financial institution presenting a heightened risk of money laundering or terrorist financing. 67 FR 21121 (April 29, 2002).

[22] See 31 CFR 103.11 (uu).

Money transmitters, like the financial institutions that are subject to this rule, plainly facilitate the cross-border flow of funds into and out of the United States, but they do so in a manner that does not resemble the correspondent accounts that are the focus of section 312. There is a relationship that exists between the money transmitter and its foreign institutional counterparties (that is, the institutions on the other end of either a "send" or "receive" transaction). While such relationships facilitate the flow of funds on behalf of customers, as do correspondent relationships, there are significant differences that directly implicate the focus of this rule.

The vast majority of money transmitters in the United States operate through a system of agents throughout the world. In fact, we estimate that over 95 percent of all cross-border remittances that are done through money transmitters use this model. Other money transmitters operate through more informal relationships, such as the trust-based hawala system.[23] Regardless of the form the relationship takes, these money transmissions are all initiated by a third party seeking to send or receive funds and are not directed or controlled by the sending or receiving institutions. Unlike the case of a covered financial institution, the establishment of an agency or other counterparty relationship in the money transmitter industry neither gives the agent/counterparty a "home" in the U.S. financial institution through which it can carry out its own transactions on an ongoing basis, nor carries with it the potential for a hub of other parties to be "nested" within the agent/counterparty. Section 312 aims at two main congressional concerns with correspondent banking: the ability of corrupt foreign financial institutions to transact business in the United States,[24] and the ability of customers of a lax foreign correspondent to access the U.S. financial system through the correspondent account while shielding their identities.[25] Indeed, one of the statutory requirements for enhanced due diligence is the identification of nested correspondent accounts and the performance of due diligence on them.[26]

We recognize that criminals and terrorists might be able to use money transmitters to move money through the United States, and that it is imperative that money transmitters conduct due diligence on their foreign counterparties to enable them to perform the appropriate level of suspicious activity and risk monitoring. However, we have addressed this risk separately through the issuance of specific guidance, as set forth below.

We believe that the obligation for a money transmitter to know its foreign counterparties (as well as its domestic agents and counterparties) is a part of each money transmitter's obligation to have appropriate policies, procedures and internal controls to guard against money laundering and the financing of terrorist activities and to report suspicious activities.[27] To further delineate these obligations, on December 4, 2004, we issued Interpretive Release No. 2004–1, which addressed the due diligence obligations of a money transmitter with regard to its foreign counterparties/agents. This interpretative rule was issued to ensure that money transmitters place appropriate controls on cross-border relationships without attempting to force the relationship to fit within this rule relating to correspondent accounts.

3. *Account.* As noted earlier, we have added to the final rule individualized definitions of the term account for each type of non-bank covered financial institution listed above to tailor the term correspondent account to the functions of the various affected industries. These industry specific definitions are similar to those contained in the final rules issued under section 326 of the Act,[28] but with one primary modification.[29] Specifically, we have not adopted the transfer exception contained in the section 326 definition of account, which excludes accounts acquired by, but not opened at, a covered financial institution.

Further, the definition of account for each covered financial institution specifically includes the word regular to stress the fact that the scope of section 312 is intended to be limited to those

[23] See Report to the Congress in accordance with section 359 of the Patriot Act, available at *http://www.fincen.gov.*

[24] See Minority Staff Report on Correspondent Banking: A Gateway to Money Laundering: Hearing Before the Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 107th Cong., 277–884 (2001).

[25] See section 302(a)(6) of the Act (finding that "correspondent banking facilities are one of the banking mechanisms susceptible in some circumstances to manipulation by foreign banks to permit the laundering of funds by hiding the identify or real parties in interest to financial transactions.").

[26] See section 312(a)(i)(2)(B)(iii) of the Act.

[27] See 31 CFR 103.125 and 103.20. We previously imposed a due diligence obligation on a money transmitter with respect to its domestic agents. See Matter of Western Union Financial Services, Inc., No. 2003–2 (March 6, 2003), available at *http://www.fincen.gov/western_union_assessment.pdf.*

[28] 31 CFR 103.121.

[29] See 31 CFR 103.122 for the definition of account in the broker-dealer context.

correspondent relationships where there is an arrangement to provide ongoing services, excluding isolated or infrequent transactions (although other obligations, such as suspicious activity reporting and funds transfer recordkeeping, apply to such transactions). Thus, for example, one time or infrequent securities transactions outside of the context of an established account relationship would not, by itself, constitute an account under the final rule.

With respect to banking institutions, we are adopting the same definition of account as contained in the section 313/319 Rule. Accordingly, for covered banking institutions, account shall mean "any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and (B) includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit." [30]

This definition is in substance very similar to the definition of account contained in the final rule issued under section 326 for banks. In this regard, we also note that the issuance by a bank of a funds transfer to, or receipt by a bank of a funds transfer from, a foreign bank does not, by itself, create an account relationship on behalf of the foreign bank under the final rule. This is consistent with the final rule issued under section 326 of the Act, which excludes wire transfers from the definition of an account.

As applied to securities broker-dealers, the term account shall mean "any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral."

For purposes of clarity and consistency, we are amending the definition of account in the section 313/319 Rule to incorporate this definition of account as applied to broker-dealers. Because this definition of account, which is specifically tailored to the securities industry, is no broader, and may well be somewhat narrower, than the definition currently applicable under that rule, there is no reason to delay the effectiveness of this amendment.

For purposes of futures commission merchants and introducing brokers, the term account shall mean "any formal relationship established by a futures commission merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity."

With respect to mutual funds, the term account shall mean "any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities." [31]

4. *Foreign bank.* The 2002 Proposal defined foreign bank to mean an organization that: (1) Is organized under the laws of a foreign country; (2) engages in the business of banking; (3) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal operations; and (4) receives deposits in the regular course of its business. The definition contained certain exceptions, including foreign central banks or monetary authorities functioning as central banks and certain international financial institutions or regional development banks. In this final rule, we have adopted the existing Bank Secrecy Act definition of foreign bank [32] (which includes foreign branches of U.S. banks) as we did in the section 313/319 Rule.[33] We believe that the existing Bank Secrecy Act definition will include the appropriate foreign entities, will be more precise, will result in fewer interpretive issues, and will not require the exceptions contained in the 2002 Proposal for foreign central banks, foreign monetary authorities that function as central banks, and international financial institutions and regional development banks, since they would not fall within this definition. We, thus, confirm that the definition of foreign bank does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.[34]

5. *Foreign financial institution.* The 2002 Proposal defined foreign financial institution to mean a foreign bank and any other person organized under foreign law which, if organized in the United States, would be required to establish an anti-money laundering program. Thus, the proposed definition of this term mirrored the definition of covered financial institution, but described entities organized outside the United States.

Commenters raised several objections to this proposed definition. Many noted that a definition tied to U.S. entities would be difficult to apply due to different terminology and licensing methods used in foreign countries. Others noted the difficulties raised by the open-ended nature of the definition, which would be extended to additional categories of financial institutions should they be required to establish anti-money laundering programs in the future. Several commenters expressed the view that the proposed definition is overly broad and should be limited to the entities typically licensed and regulated as financial institutions, such as depository institutions, securities and futures firms, mutual funds, and money transmitters. The congressional comment supported the broad proposed definition, stating that it captured the broad scope intended by Congress.

After careful consideration of the issues raised, we have decided to limit the definition of foreign financial institutions to those institutions that may pose a more significant risk for money laundering and, thus, will be subject to this requirement, in order to appropriately focus covered financial institutions' due diligence efforts on the risk posed by the foreign institution rather than on the mere form of the entity. Accordingly, in this final rule, foreign financial institutions are defined

[30] The phrase "by a bank" has been added to the definition of account to conform to the definitions of account applicable to the non-bank covered financial institutions. The phrase "other financial transactions" includes, but is not limited to, the purchase or sale of securities, securities lending and borrowing, and the holding of securities or other assets in connection with securities transactions for safekeeping or as collateral.

[31] We are aware that mutual funds do not offer the types of one-time services, or isolated or infrequent transactions, that other types of financial institutions may offer. The reference to providing regular services is included in the definition of account for mutual funds for the purpose of maintaining consistency between definitions.

[32] Current Bank Secrecy Act regulations define foreign bank as "a bank organized under foreign law, or an agency, branch or office located outside the United States of a bank." The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law. 31 CFR 103.11(o).

[33] Section 313/319 Rule, *supra* note 7, at 60566.

[34] Such institutions include, for example, the Bank for International Settlements, International Bank for Reconstruction and Development (World Bank), International Monetary Fund, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Finance Corporation, North American Development Bank, International Development Association, Multilateral Investment Guarantee Agency, European Investment Bank, Nordic Investment Bank, and Council of Europe Development Bank.

as foreign banks; the foreign offices of covered financial institutions; non-U.S. entities that, if they were located in the United States, would be a securities broker-dealer, futures commission merchant, or mutual fund:[35] and non-U.S. entities that are engaged in the business of, and are readily identifiable as, a currency dealer or exchanger or a money transmitter. This reflects our belief that such entities operate in a manner that both makes them readily identifiable[36] (despite differences in terminology or licensing[37]) and that poses a heightened risk of money laundering because they offer to money launderers outside the United States easy access to the U.S. financial system, as a result of their manner of operation and their offering of products with a high degree of liquidity. We, however, have included an exception to the definition of a foreign financial institution to exclude those entities that engage in currency exchange or money transmission only as an incidental aspect of their business. An example of this might be a hotel that exchanges small amounts of foreign currency for its guests or a tax service that cashes tax return checks as an accommodation. Although we specifically have excluded money services businesses from this rule as covered financial institutions, we have included foreign money transmitters and foreign currency dealers and exchangers as foreign financial institutions because of their role as consumers of correspondent services offered by covered financial institutions such as banks.

6. *Offshore banking license.* The 2002 Proposal proposed the same definition of offshore banking license as that contained in 31 U.S.C. 5318(i): A license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license. This final rule adopts the proposed definition without change.

B. Section 103.176—Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions

1. *General due diligence procedures.* Section 103.176(a) of the 2002 Proposal required that every covered financial institution maintain a due diligence program that includes policies, procedures, and controls reasonably designed to enable the financial institution to detect and report any known or suspected money laundering conducted through or involving any correspondent account that it maintains for a foreign financial institution. We have revised the language of the final rule to reflect the fact that the due diligence policies, procedures, and internal controls must be appropriate, specific, and risk-based, and that the rule applies to any correspondent account that is established, maintained, administered, or managed in the United States for a foreign financial institution. This change is consistent with the risk-based approach adopted herein, as well as with the congressional comment. The final rule also includes the requirement that the due diligence program be part of the covered financial institution's anti-money laundering program otherwise required by this subpart.

The 2002 Proposal further required that all due diligence programs maintained by covered financial institutions contain five specific procedures.[38] Many commenters urged us to adopt a risk-based rule that would enable covered financial institutions to better focus their attention and resources on the types of accounts that have a greater susceptibility to money laundering. In particular, some commenters suggested that only the first two elements contained in the 2002 Proposal should be included in the final rule, and that the remaining elements should be part of the institution's risk assessment program. Commenters noted in particular that the fifth proposed element—reviewing public information to ascertain whether the foreign institution has been the subject of criminal or regulatory action—is particularly problematic given the virtually limitless sources of public information. The comments suggested that, if a requirement to review public information is retained in the final rule, the financial institution's obligation be limited in some way (*e.g.*, information disseminated through print media that is readily available and is generally regarded as a leading publication and reliable). Commenters stressed that, if the definition of correspondent account is broad, financial institutions should be given flexibility in conducting due diligence, rather than being required to perform a specified list of inquiries for each account. The congressional comment also supported the adoption of a final rule incorporating the principle that the due diligence requirement should be risk-based.

We agree that this provision should be modified to incorporate a risk-based approach to the entire rule. Thus, each covered financial institution will be required to include in its due diligence program procedures for assessing the anti-money laundering risks posed by correspondent accounts it maintains for foreign financial institutions based upon a consideration of relevant factors, as appropriate to the particular jurisdiction, customer, and account. Given the breadth of the correspondent account definition, we believe that this requirement will permit covered financial institutions to assess the risks posed by their various non-U.S. customers and accounts and to direct their resources most appropriately at those accounts that pose a more significant money laundering risk. Relevant risk factors, which were not spelled out in detail in the 2002 Proposal, shall include, as appropriate:

- The nature of the foreign financial institution's business and the markets it serves, and the extent to which its business and the markets it serves present an increased risk for money laundering.
- The nature of the correspondent account, including the types of services to be provided (e.g., proprietary or customer), and the purpose and anticipated activity of the account.
- The nature and duration of the covered financial institution's relationship with the foreign financial institution (and, if relevant, with any

[35] For example, the European Union adopted a license regime throughout the European Union for "undertakings for collective investment in transferable securities," similar to mutual funds in the United States, under the Directive on Undertakings for Collective Investment in Transferable Securities. *See* Council Directive 85/611/EE of December 20, 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, 1985 O.J. (L 375) 3.

[36] We note that the definitions of a currency dealer or exchanger and a money transmitter for purposes of inclusion as a foreign financial institution under the final rule do not correspond to the definitions of 31 CFR 103.11(uu). For purposes of this rule, we include only those businesses that are readily identifiable as such.

[37] We note that, except for mutual funds, the definition of foreign financial institution is not necessarily limited to the corresponding foreign institutions that are required by their chartering jurisdictions to register as such, but rather is a functional definition based on the entity's primary activity or activities.

[38] The five required procedures were: (1) Determining whether the correspondent account is subject to the enhanced due diligence requirements; (2) assessing whether the foreign financial institution presents a significant risk for money laundering; (3) considering information available from U.S. government agencies and multinational organizations with respect to supervision and regulation, if any, applicable to the foreign financial institution; (4) reviewing guidance we or the applicable federal functional regulator issued regarding money laundering risks associated with particular foreign financial institutions and correspondent accounts for foreign financial institutions generally; and (5) reviewing public information to ascertain whether the foreign financial institution has been the subject of criminal action of any nature or regulatory action relating to money laundering. The 2002 Proposal, *supra* note 2, at 37743.

affiliate of the foreign financial institution).

• The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered. This factor has been clarified to ensure that a covered financial institution considers, when appropriate, the anti-money laundering and supervisory regime of the foreign financial institution. In addition, the factor is designed to ensure that the covered financial institution considers, when appropriate and to the extent that information is reasonably available, the anti-money laundering and supervisory regime of the jurisdiction in which a corporate owner of the foreign financial institution is incorporated or chartered. Thus, for example, if a foreign financial institution is owned by an institution that is incorporated or chartered in a jurisdiction that has a robust anti-money laundering and supervisory regime, and the covered financial institution believes that this is relevant in assessing the risk posed by the foreign financial institution, then the covered financial institution should take this information into account in its risk assessment.

• Any information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record, including public information in standard industry guides, periodicals, and major publications. The scope and depth of such a review will depend on the nature of the information uncovered. It should generally include a consideration of information that might be available from the Department of the Treasury or other federal governmental sources regarding the money laundering risks associated with particular foreign financial institutions and correspondent accounts for foreign financial institutions generally. This information could be contained in issuances stemming from action taken under section 311 of the Act, as well as determinations concerning comprehensive consolidated supervision made by the Federal Reserve in connection with applications from foreign banks or determinations concerning consolidated supervised entities or supervised investment bank holding companies by the Securities and Exchange Commission.

The final rule includes a new subparagraph (3) under the general due diligence paragraph (a) of section 103.176. This new provision states explicitly the requirement that was implicit in the 2002 Proposal: that covered financial institutions must apply ongoing risk-based procedures and controls to each correspondent account reasonably designed to detect and report money laundering.[39] We believe that, as part of ongoing due diligence, covered financial institutions should periodically review their correspondent accounts. We do not intend this review, in the ordinary situation, to mean a scrutiny of every transaction taking place within the account, but, instead, a review of the account sufficient to ensure that the covered financial institution can determine whether the nature and volume of account activity is generally consistent with information regarding the purpose and expected account activity and to ensure that the covered financial institutions can adequately identify suspicious transactions. For example, we understand that a number of covered financial institutions maintain account profiles for their correspondents in order to anticipate how the account might be used and the expected volume of activity. These profiles can serve as important baselines for detecting unusual activity.

We believe that an effective general due diligence program under section 103.176(a) will provide for a range of due diligence measures, based on a covered financial institution's risk assessment of a correspondent account. The starting point for financial institutions, therefore, should be a stratification of their money laundering risk based on a review of the relevant risk factors to determine which accounts may require increased measures. Section 103.176(a) does not prescribe the elements of increased due diligence that should be associated with specific risk factors, but a covered financial institution's general due diligence program should identify risk factors that would warrant the institution conducting additional scrutiny of a particular account. The covered financial institution's program under this rule should address these issues at a level of specificity and detail appropriate to that institution's foreign correspondent account operations and the types of accounts offered. In addition, the program should take into consideration the fact that some foreign correspondent bank accounts that a covered financial institution determines have a high risk of money laundering may necessitate increased due diligence even though they may not specifically fall within the statutory categories that would trigger enhanced due diligence. This due diligence may include, when appropriate, transaction testing or one or more of the elements of enhanced due diligence described in section 5318(i)(2).

Numerous commenters sought clarification from us on the extent to which covered financial institutions can rely on reputable foreign intermediaries to conduct due diligence of the intermediaries' customers because of concerns that the due diligence requirements under this section would be particularly burdensome. For example, one commenter noted that this requirement would be particularly onerous for mutual funds, which can have thousands of shareholders, some of which purchase their shares directly and some of which invest through intermediaries, including certain foreign financial institutions. These commenters misunderstand the requirements of 31 U.S.C. 5318(i) and this rule.

The due diligence requirement under this section of the Bank Secrecy Act generally requires an assessment of the money laundering risks presented by the foreign financial institution for which the correspondent account is maintained, and not for the customers of that institution. If, however, a covered financial institution's review of the account identifies activity inconsistent with what is expected, then, consistent with a risk-based due diligence program, the covered financial institution may need to review the account more carefully.

2. *Enhanced due diligence procedures.* Section 5318(i)(2) requires that a covered financial institution perform enhanced due diligence with regard to a correspondent account established or maintained for certain foreign banks. The 2002 Proposal proposed to implement these requirements in section 103.176(b), which specified minimum due diligence program requirements applicable to all foreign banks subject to enhanced due diligence.

In light of extensive comments received, we are proposing to take a different approach toward implementing this provision than that set forth in the 2002 Proposal. To ensure adequate notice and opportunity for comment, we have decided to re-notice the enhanced due diligence portion of section 312 with regard to

[39] Covered financial institutions that are not currently subject to suspicious activity reporting obligations under the Bank Secrecy Act rules (e.g., mutual funds) are encouraged to file voluntary reports of known or suspected violations of law conducted through or involving a correspondent account.

correspondent accounts in its entirety. The proposed rulemaking is published elsewhere in this separate part of the **Federal Register**.

3. *Special procedures.* Section 103.176(d) of the 2002 Proposal contained special procedures to be included in the covered financial institution's due diligence program. Those procedures addressed what the financial institution should do in situations where appropriate due diligence cannot be performed, including when the institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account. There were no comments submitted regarding this provision, which is unchanged in this final rule.

4. *Effective dates.* Although the 2002 Proposal did not address the issue of an effective date, many commenters noted the difficulty of complying with the requirements of 31 U.S.C. 5318(i), especially with regard to its application to previously existing accounts, and also urged us to allow a sufficient transition period. We are mindful of the significant burden that will result from the statutory requirement that the provision applies to all correspondent accounts, regardless of when they were opened.

The final rule contains a new section 103.176(e)(1) that provides for the following effective dates for the obligations under this section: Effective 90 days after the date of publication of the final rule, the requirements of the final rule will apply to correspondent accounts opened on or after that date, and, effective 270 days after the date of publication of the final rule, the rule's requirements will apply to all correspondent accounts opened prior to the date that is 90 days after the date of publication of the final rule.[40]

Due to the fact that we are issuing a new Notice of Proposed Rulemaking (Notice) with regard to enhanced due diligence under section 5318(i)(2), it is necessary to ensure that there are no gaps in the relevant implementation periods. Consequently, we are deleting 31 CFR 103.181 through 103.183 set forth in the Interim Rule dealing with effective dates and are adding the following two paragraphs to take their place.

Paragraph 103.176(e)(2) contains a special implementation rule for banks. This paragraph requires that banks continue to comply with the due diligence requirements for correspondent accounts in 31 U.S.C. 5318(i) until the 90 and 270-day effective dates described in paragraph 103.176(e)(1) are triggered. This is consistent with the provisions of the Interim Rule found at 31 CFR 103.181. Moreover, consistent with the Interim Rule, paragraph (e)(2) provides that banks must continue to comply with the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) until a final rule based on the Notice is published.

Paragraph 103.176(e)(3) contains a special implementation rule for all other covered financial institutions to ensure consistency with the Interim Rule found at 31 CFR 103.182 and 103.183. Thus, this paragraph provides that securities broker-dealers, futures commission merchants, introducing brokers, mutual funds, and trust banks or trust companies that have a federal regulator (1) are not required to comply with the due diligence requirements of 31 U.S.C. 5318(i)(1) until the 90 and 270-day effective dates described in paragraph 103.176(e)(1) are triggered, and (2) are not required to comply with the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) until otherwise provided by us in a final rule issued regarding those requirements.

Finally, paragraph (e)(4) contains a general exemption from the due diligence requirements for correspondent accounts contained in 31 U.S.C. 5318(i) for all financial institutions that are not defined in the final rule as covered financial institutions. This exemption replaces without substantive change the provisions of the Interim Rule found at 31 CFR 103.183.

C. Section 103.178—Due Diligence Programs for Private Banking Accounts for Non-U.S. Persons—Definitions

Section 103.178 of the 2002 Proposal implemented the requirements in 31 U.S.C. 5318(i) regarding due diligence standards applicable to private banking accounts established, administered, managed, or maintained in the United States for or on behalf of non-U.S. persons.

a. Definitions—In General

The definitions relating to this section generated considerable comment and are discussed below.

1. *Beneficial ownership.* Proposed section 103.175(b) defined a beneficial ownership interest in an account generally as the legal authority to fund, direct, or manage the account or a legal entitlement to the assets of an account (excluding financial interests that do not amount to either $1,000,000 or five percent of either the corpus or income of the account).

Many commenters stated that the proposed definition was overly broad and unworkable in practice. They noted that the definition would expand the breadth of beneficial ownership to include all individuals with only a financial interest in an account (subject to the de minimis limitation). Such a definition, they argued, would be unworkable, primarily because it would mean that covered financial institutions would be required to identify, and perform due diligence on, any individual with anything other than an insubstantial interest in an account, even when such individuals do not assert control, direction, or management over the account.

Commenters offered various suggestions for narrowing the scope of the definition. Several commenters suggested that we incorporate the international best practices principles on beneficial ownership established by the Wolfsberg Group (Wolfsberg),[41] which stress the importance of control over the account in determining beneficial ownership.[42] The congressional comment suggested that we retain the definition as proposed, but clarify that beneficial ownership interest would apply only to individuals and not to legal entities.

We agree with commenters that the proposed definition is insufficiently tailored to the serious risks of money laundering, and that the term beneficial owner, for purposes of this rule, should apply only to individuals, not legal entities.[43] Individuals having a beneficial interest in the assets of an account without a corresponding ability to control the account should not be deemed beneficial owners.[44] Accordingly, this final rule defines the term beneficial owner (rather than "beneficial ownership interest," the term defined in the 2002 Proposal) to mean "an individual who has a level of control over, or entitlement to, the funds

[40] The due diligence program adopted pursuant to section 103.176 of the final rule, like all programs required by Bank Secrecy Act regulations, must be part of the covered financial institution's anti-money laundering program, and must be approved by its board of directors or an appropriate committee thereof, or senior management.

[41] The Wolfsberg Group is a consortium of 12 international banks that establishes global anti-money laundering guidelines for the financial services industry.

[42] Wolfsberg Group, "Wolfsberg Anti-Money Laundering Principles: FAQs on Beneficial Ownership," (2005), Q. 1, (hereinafter "FAQs on Beneficial Ownership"), available at *http://www.wolfsberg-principles.com/faq-ownership.html#2.*

[43] For a further discussion of this issue, see *infra* notes 54–55 and accompanying text.

[44] For example, under the proposed definition, minor children who are beneficiaries of a trust would have been considered to have a beneficial ownership interest despite the fact that they lack control over the account.

or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, direct or manage the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary) does not cause the individual to be a beneficial owner." Individuals who have an entitlement to funds in an account or an ability to fund the account and who also have the ability to "manage or direct" the account have the requisite level of control and must be identified by the financial institution.[45]

We believe that the definition we are adopting in this final rule is consistent with the concept of beneficial ownership set forth in section 5318A(e)(3), as added by section 311 of the Act.[46] The rule also should provide covered financial institutions with a workable standard for assessing beneficial ownership for private banking accounts, thereby allowing covered financial institutions to focus their due diligence efforts in a risk-based fashion on those accounts and individuals posing a heightened risk of money laundering. Private banking accounts may be particularly vulnerable to money laundering because they may afford wealthy clients a large measure of anonymity, as well as access to the U.S. financial system.[47]

2. *Covered financial institution.* We are using the same definition of covered financial institution for both the private banking provisions of section 103.178 and the correspondent account provisions of section 103.176. We, however, understand that, at this time, private banking accounts are likely to be offered primarily by depository institutions, uninsured trust banks and trust companies that are federally regulated and are subject to an anti-money laundering program requirement, securities broker-dealers, and futures commission merchants and introducing brokers. Should any other covered financial institutions offer accounts that meet the definition of a private banking account in the future, they would be required to comply with this section of the rule.

3. *Non-U.S. person.* The 2002 Proposal defined non-U.S. person as an "individual who is neither a United States citizen nor a lawful permanent resident as defined in 26 U.S.C. 7701(b)(6)." The final rule defines the term more appropriately by reference to the Immigration and Nationality Act, but without any change in substance. We are clarifying that this definition shall apply only to section 103.178 and does not incorporate or change the definition of person as used in the other sections of this part.

4. *Private banking account.* Section 103.175(n) of the 2002 Proposal generally adopted the definition of private banking account that appears in 31 U.S.C. 5318(i). Section 5318(i) defines a private banking account as an account (or any combination of accounts) that: (1) Requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000; (2) is established on behalf of one or more individuals who have a direct or beneficial ownership interest in the account; and (3) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account. Commenters generally sought further clarification as to the precise scope of this term, raising issues regarding all three elements of the definition.[48]

b. Required Minimum Deposit of $1,000,000

Many commenters sought clarification of the meaning of the clause "requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000." Some commenters raised concerns that adopting a final rule containing the statutory threshold of $1,000,000 would mean that many high value accounts at covered financial institutions, that would otherwise meet the definition of a private banking account, would not be subject to this rule simply because the covered financial institution does not require a minimum deposit of at least $1,000,000.

Although some accounts may not be covered by this rule, we cannot broaden the statutory definition, which was the basis for the definition contained in the 2002 Proposal, in order to reach a different result.[49] The plain language of the statute, as well as the legislative history of section 5318(i),[50] upon which the 2002 Proposal was based, are unequivocal: a private banking account is an account (or combination of accounts) that requires a minimum deposit of not less than $1,000,000. Section 312 of the Act was intended to cover those accounts opened by wealthy foreign individuals making large deposits who can avail themselves of the services of a liaison,[51] and we may not depart in the final rule from the plain language of the statute. The final rule is thus unchanged from the 2002 Proposal, except that the rule uses the statutory term "deposit" in place of the term "amount" used in the 2002 Proposal.

Certain covered financial institutions may offer a wide range of services that are generically termed private banking, and an institution may require different minimum deposits that are commensurate with its various types of private banking services. If an institution offers more than one level of private banking service to its clients, then any account or combination of accounts that require a $1,000,000

[45] Both state and federal law generally impute the ownership of "self-settled" trusts—trusts where the settlor (the one who sets up and funds the trust) is also the beneficiary—to the settlor-beneficiary. This situation stands in sharp contrast to that in which minor children are simply the trust beneficiaries; their interests are, thus, properly excluded from the definition of beneficial ownership for purposes of the final rule. Individuals with the ability to fund an account by virtue of being the source of the assets, however, should be distinguished from individuals such as lawyers and liaisons who merely perform the ministerial functions of placing funds in various investment vehicles.

[46] Section 311(e)(3) of the Act provides, in relevant part, that the Secretary shall promulgate regulations defining beneficial ownership that shall address issues relating to an individual's ability to "fund, direct or manage the account" and shall ensure that the definition does not extend to any individual with an "immaterial" interest in the assets of the account. 31 U.S.C. 5318A(e)(3).

[47] See Hearings on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities, Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs, 106th Cong., 872 (1999) (Minority Staff Report) (hereinafter "Private Banking Report").

[48] We note that, although this final rule applies to those private banking accounts meeting the definition in the rule, many covered financial institutions offer forms of private banking relationships that should be given a greater level of due diligence under the institution's risk-based anti-money laundering program than that generally afforded the institution's retail customers. This is primarily because of the large amounts of money that can be managed through such relationships and the personal contact that is created in connection with these relationships. See, e.g., Federal Financial Institutions Examination Council, Bank Secrecy Act Anti-Money Laundering Examination Manual, June 2005, available at *http://www.ffiec.gov/pdf/bsamanual.pdf* (hereinafter Bank Secrecy Act Exam Manual).

[49] We intend to review the extent to which the application of the statutory definition could result in money laundering risks, and, if warranted, initiate a rulemaking to require special due diligence for a broader range of private banking accounts than are subject to section 5318(i) and this final rule. Such a rulemaking would be based on our authority under sections 5318(a)(2) and (h)(2) of the Bank Secrecy Act.

[50] The legislative history of section 5318(i) supports the plain language reading of the definition. In explaining the definitional requirements for a private banking account, Senator Levin stated: "First, the account in question must require a $1 million minimum aggregate of deposits." 147 Cong. Rec., *supra* note 16, at 11037.

[51] See *id.* at 11036.

aggregate minimum deposit, and also satisfy the other elements of the definition, including the services of a liaison, would be subject to the rule.

c. Liaison

Commenters also asked us to clarify the term liaison as it applies to private banking accounts because the term potentially could bring within its scope individuals who perform only administrative functions, such as account administrators or customer service representatives. In order to articulate the meaning of this term, it is helpful to describe briefly what is meant by private banking. Although there is no generally accepted definition of private banking, the term refers broadly to the provision of highly personalized financial and related services to wealthy clients, principally individuals and families. Moreover, it is not a single activity, but instead comprises a range of different products and services, including cash management, funds transfer, asset management, creation of offshore entities, financial planning, lending and custody services.[52] Private banking typically includes the following key components: Tailoring services to individual client requirements; anticipation of client needs; long-term relationship orientation; and personal contact.[53] These services may vary according to the size of a client's deposit or account and the institution's private banking program. Section 5318(i) was intended to cover those accounts opened by wealthy foreign individuals making large deposits, who avail themselves of the services of an employee of the financial institution who can transfer funds, create offshore corporations or accounts, or engage in other transactions carrying increased risks of money laundering.[54]

The liaison is the covered financial institution's employee who develops (or continues) a long-term relationship with the client and is actively involved in providing these services.[55] To that end, a liaison may, for example, coordinate the efforts of a team of specialists including investment managers, trust officers, and estate planners; open accounts on behalf of the client and manage and arrange transactions among those accounts; and conduct a variety of financial transactions to benefit the covered financial institution's client.[56] To provide this type of personalized service for the client and to understand the long-term goals and needs of the client, a liaison will routinely gather extensive information about the client, including the client's personal, professional, and financial history. Thus, the meaning of the term liaison in this rule should not be confused with, for example, a customer service representative or account manager who may be assigned to a large number of customers (sometimes for a geographical region) to respond to questions customers may have regarding the institution's products and services or to take orders for securities or futures transactions. Those persons do not provide the level of service or obtain the extent of client information characteristic of private banking.

d. Account Established on Behalf of One or More Direct or Beneficial Owners

Commenters also sought clarification regarding the requirement in section 5318(i) and the 2002 Proposal that the account be "established on behalf of or for the benefit of one or more individuals who have a direct or beneficial ownership interest in the account." Reading this phrase in conjunction with the 2002 Proposal's definition of beneficial ownership interest, some commenters were concerned that section 5318(i) could apply to accounts maintained by public corporations, or by mutual funds or other collective investment vehicles, on behalf of numerous investors who could be viewed as having beneficial ownership interests in the account. These commenters claimed that the due diligence burdens resulting from such a reading of this provision would be excessive and impractical.[57]

We have addressed the concerns of these commenters by clarifying that the definition of beneficial owner is limited to individual(s) with control over the account (as opposed to passive investors with only financial interests).[58] Furthermore, as a general matter, we do not believe that accounts held by public corporations, mutual funds, or other collective investment vehicles would qualify as private banking accounts. Such accounts likely would not involve a liaison, would not be established on behalf of one or more individuals with beneficial ownership of (*i.e.*, control over) such an account, and would be viewed as institutional accounts managed by a different unit of the covered financial institution. On the other hand, a private banking account established in the name of a legal entity (such as a personal investment company or trust)[59] for the benefit of an individual owner would be subject to the final rule if it also met the other definitional requirements.

Some commenters asked us to clarify the language of section 5318(i)(1) that applies the statutory due diligence requirements to private banking accounts that a U.S. financial institution "establishes, maintains, administers or manages" in the United States for a non-U.S. person.[60] The phrase is intended to cover not only those accounts that are established or maintained in the United States, but also those accounts that are established and maintained outside of the United States but are administered or managed by employees within the United States.[61] Private banking accounts can be established (*i.e.*, opened) and maintained (*i.e.*, the records are kept) in branch offices outside of the United States, while the accounts are administered or managed by employees of the institution within the United States. For example, the records of a private banking client may be physically located at a foreign branch

[52] Bank Secrecy Act Exam Manual, *supra* note 48.

[53] D. Maude and P. Molyneau, Private Banking: Maximizing Performance in a Competitive Market at 18 (Euromoney Publications PLC 1996).

[54] 147 Cong. Rec. *supra* note 16, at 11036.

[55] See Private Banking Report, *supra* note 47, at 875. The Private Banking Report, which served as the basis for the private banking provisions of section 312 of the Act, illustrates the services that distinguish liaisons from traditional customer service employees of a financial institution.

[56] See Private Banking Report, *supra* note 47, at 875.

[57] As a means of creating a "bright line" test to avoid this result, one commenter recommended that the final rule exclude from the definition of private banking account hedge funds and other investment vehicles unless they have five or fewer investors, based on the standard suggested in section 356(c) of the Act, which requires the submission of an interagency report to Congress relating to investment companies. That section specifically requires the report to address the question of whether certain personal holding companies with five or fewer shareholders or beneficial owners should be treated as financial institutions under 31 U.S.C. 5312(a)(2)(I) and should be required to disclose their beneficial owners when opening accounts at U.S. financial institutions. The report was issued December 31, 2002. See *http://www.treas.gov/press/releases/po3721.htm*. As a result of the revised definition of beneficial ownership in the final rule, no such limit is necessary.

[58] We have modified this element of the private banking account definition in the final rule accordingly to require an account for those "who are direct or beneficial owners of the account." We have also replaced "individuals" with "non-U.S. persons" to simplify the final rule.

[59] See Bank Secrecy Act Exam Manual, *supra* note 48.

[60] The same geographical scope applies in section 312 of the Act with respect to correspondent accounts, as well as in section 313 of the Act and the Section 313/319 Rule.

[61] For example, a covered financial institution may establish a personal investment company for a private banking client in an offshore jurisdiction, but may manage the account in a U.S. office. See Board of Governors of the Federal Reserve System, "Private Banking Activities" (SR Letter 97–19 (SUP), June 30, 1997), available at *http://www.federalreserve.gov* (hereinafter "Federal Reserve Guidance"). Such a relationship would fall within the geographic requirement of the final rule.

of the covered financial institution, while an employee of the institution in the United States exercises control over, and manages the day-to-day activities of, the account.[62]

Senior foreign political figure. Commenters generally found the definition of senior foreign political figure,[63] set forth in § 103.175(o) of the 2002 Proposal, both far-reaching and difficult to implement. Commenters specifically criticized the inclusion of persons "widely and publicly known" to maintain a close personal or professional relationship with individuals holding senior official positions. They argued that such a definitional standard would require financial institutions to look beyond the professional and financial histories of their clients and into their personal relationships. For many commenters, the phrase "widely and publicly known" raised questions about the resource burdens entailed in reviewing the vast amounts of public information currently available to ascertain such association. Yet another commenter requested that we develop a list of senior foreign political figures similar to the list issued by the Department of the Treasury's Office of Foreign Assets Control in order to ensure that covered financial institutions apply the definition in a uniform fashion.

We continue to believe that the proposed definition of senior foreign political figure is generally appropriate. However, we are modifying the definition to specify that the definition includes a "person who is widely and publicly known * * * to be a close associate of" rather than a "person who is widely and publicly known * * * to maintain a close personal or professional relationship with" any such individual. This definition is consistent with similar standards adopted by the international community regarding politically exposed persons,[64] including the close associates aspect of the definition that was the primary focus of most commenters' objections.[65]

It should also be noted here that, prior to accepting any private banking client, especially one who will have a high dollar account, a covered financial institution should ordinarily perform sufficient due diligence to ensure that it is comfortable with the prospective customer and his or her source of funds. This type of due diligence should enable the covered financial institution to determine who the customer is, what his or her background is, and, specifically, whether he or she is a senior foreign political figure.

Senior official or executive. The 2002 Proposal defined senior official or executive to mean an individual with substantial authority over policy, operations, or the use of government-owned resources. The final rule adopts the proposed definition without change. We believe that the definition of a senior official or executive must remain sufficiently flexible to capture the range of individuals who, by virtue of their office or position, potentially pose a risk that their funds may be the proceeds of foreign corruption. But this flexibility, according to commenters, has come at the expense of specificity, and commenters have requested further guidance in identifying such individuals. Titles, while helpful, may not themselves provide sufficient information about the office because governments are organized differently from jurisdiction to jurisdiction and official titles and responsibilities may vary accordingly.

We believe covered financial institutions should consider a range of factors when determining whether a particular foreign official is a senior official. Relevant factors include examining the official responsibilities of the individual's office, the nature of the title (honorary or salaried political position), the level of authority the individual has over governmental activities and over other officials, and whether the position affords the individual access to significant government assets and funds. For example, as a general matter, we expect that individuals holding the equivalent of cabinet level positions with their government would fall within the definition of a senior official because of their ability to establish government policy and their access to government resources. However, a senior official could also include a governor or the mayor of a major city. If, for example, the city has importance nationally or internationally, the governor or mayor could have the same type of political influence and access to government resources as would an official holding the equivalent of a cabinet level position. Thus, where a covered financial institution's due diligence reveals that the nominal or beneficial owner of a private banking account holds some type of government position, the institution may need to make additional inquiries to determine whether that position or title qualifies as a senior official or executive.

In defining the terms senior foreign political figure and senior official or executive, we have sought to provide some guidance and flexibility because an overly precise and rigid definition is not feasible and would not adequately implement the statutory intent of this section. In addition, as noted previously, through the course of exercising the due diligence that is necessary and appropriate for reviewing the acceptability of a high dollar account for a potential senior foreign political figure or a senior official or executive, a covered financial institution should be able to gather the information necessary to comply with this rule.

Immediate family member. The 2002 Proposal defined immediate family member as "a spouse, parents, siblings, children, and a spouse's parents or siblings." We did not receive comments on this proposed definition and are adopting it in the final rule without change.

D. Section 103.178—Due Diligence Programs for Private Banking Accounts

1. *Due diligence generally.* Section 103.178(a) of the 2002 Proposal required each covered financial institution to maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or

[62] However, the fact that securities issued and traded in the United States are held in a private banking account would not by itself suggest that that the account is controlled, managed, or administered in the United States. On the other hand, if investment management decisions are made in the United States, this would constitute management of the account in the United States.

[63] The proposed rule defined senior foreign political figure as: "(i) A current or former senior official in the executive, legislative, administrative or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned commercial enterprise; (ii) a corporation, business or other entity that has been formed by, or for the benefit of, any such individual; (iii) an immediate family member of any such individual; and (iv) a person who is widely and publicly known (or is actually known by the relevant covered financial institution) to maintain a close personal or professional relationship with any such individual." 2002 Proposal, *supra* note 2, at 37743.

[64] See, *e.g.*, Basel Committee on Banking Supervision, "Customer Due Diligence for Banks," (Oct. 2001) at 10, which defines politically exposed persons as "individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial, or military officials, senior executives of publicly owned corporations and important political party officials."

[65] See Wolfsberg Group, "Wolfsberg AML Principles on Private Banking," (1st revision, May 2002) at 2, available at *http://www.wolfsberg-principles.com*, which likewise defines politically exposed persons as "individuals holding or having held positions of public trust, such as government officials, senior executives of government corporations, politicians, important political party officials, etc., as well as their families and close associates."

suspicious activity conducted through or involving any private banking account that the financial institution establishes, maintains, administers, or manages in the United States for or on behalf of a non-U.S. person. This section of the final rule contains technical modifications,[66] and also includes the requirement that the due diligence program shall be part of the covered financial institution's anti-money laundering program otherwise required by the subpart.

2. *Minimum due diligence requirements.* Section 103.178(b) of the 2002 Proposal set forth minimum due diligence requirements for private banking accounts. This section required that the covered financial institution's due diligence program include reasonable steps to ensure that the institution: (1) Ascertain the identity of all nominal and beneficial owners,[67] as well as information on their lines of business and sources of wealth; (2) ascertain the source of funds deposited into the private banking account; (3) ascertain whether any account holder is a senior foreign political figure; and (4) report, in accordance with applicable law and regulation, any suspected money laundering or suspicious activity. Commenters generally raised concerns about the burdens involved in complying with section 103.178(b) in several respects. These included the difficulty of identifying the beneficial owners given the 2002 Proposal's definition; the difficulty of obtaining all the required information about such persons, and the level of intrusiveness required; the problems associated with identifying senior foreign political figures given the breadth of the definition; and the extent, if any, to which financial institutions could rely on due diligence conducted by well-regulated intermediaries to satisfy their obligations under this provision.

The final rule requires that covered financial institutions implement a risk-based due diligence program that incorporates the minimum standards set forth in section 103.178(b).[68] As discussed in the preamble to the 2002 Proposal, the nature and extent of the due diligence conducted will likely vary with each client depending on the presence of potential risk factors. More extensive due diligence, for example, may be appropriate for new clients; clients who operate in, or whose funds are transmitted from or through, jurisdictions with weak anti-money laundering controls; and clients whose lines of business may be cash-based (such as casinos or currency exchanges). Due diligence should also be commensurate with the size of the account. Accounts with relatively more deposits and assets should be subject to greater due diligence, requiring covered financial institutions to conduct more extensive investigation into the relevant factors. In addition, if the institution at any time learns of information that casts doubt on previous information, further due diligence would be appropriate.

We have largely retained the language of section 103.178(b) as contained in the 2002 Proposal, but have clarified the requirements of paragraph (b)(2). This paragraph will now require covered financial institutions to ascertain for private banking accounts information regarding the purpose of the account as well as the anticipated account activity. To assist covered financial institutions in meeting their compliance obligations, we are providing additional guidance regarding the specific requirements set forth below.

a. Nominal and Beneficial Owners

Section 103.178(b)(1) of the 2002 Proposal required covered financial institutions to take reasonable steps to ascertain the identity of all nominal (*i.e.*, named) holders and any beneficial owners of the private banking account, as well as information on those holders' lines of business and sources of wealth. The final rule modifies this provision to more accurately reflect the wording of the statute, which does not refer to lines of business or sources of wealth. However, to comply with the requirement that a covered financial institution perform sufficient due diligence with regard to its private banking accounts to guard against money laundering and to report any suspicious activity, part of an institution's due diligence may often include a review of the individual's lines of business and sources of wealth. The final rule is also modified by employing the term beneficial owner instead of beneficial ownership interest so that it is consistent with the definition as it appears in section 103.175(b) of the final rule. Accordingly, this final rule requires covered financial institutions to take reasonable steps to ascertain the identity of all nominal and beneficial owners of private banking accounts and to apply due diligence measures to those individuals.

Commenters maintained that the compliance burdens under this provision would be excessive, particularly as it is applied to all beneficial owners of private banking accounts. As this final rule adopts a narrower definition of beneficial owner than that contained in the 2002 Proposal, we anticipate that the compliance burdens associated with this section will be reduced. The definition of beneficial owner centers on actual rather than nominal control. Therefore, covered financial institutions will need to make a specific factual determination as to the beneficial owners (*i.e.*, individuals with actual control) of an account on a case-by-case basis. We expect that covered financial institutions will look through the nominal owner of the account to determine who has effective control over the account. For example, when an account is opened by a natural person, the financial institution should establish whether the client is acting on his or her own behalf and should perform additional diligence if doubt exists as to the identity of the beneficial owner(s).[69] For an account holder that is a legal entity that is not publicly traded (such as a private investment company), a financial institution should ensure that it has sufficient information about the structure of the entity, including its directors, shareholders, and those with control over the account, and should determine which individual (or individuals) constitutes the beneficial owner(s) for purposes of due diligence.[70] Likewise, in the case of a

[66] For example, the clause "by or on behalf of a non-U.S. person" has been deleted because that limitation has been included in the final rule's definition of a private banking account. Because the final rule applies to private banking accounts for non-U.S. persons, covered financial institutions will need to determine whether a client is a non-U.S. person. We do not believe that such a determination should be difficult given the amount of information that private bankers typically obtain about their clients.

[67] Covered financial institutions also are required to implement a customer identification program pursuant to section 326 of the Act and its implementing regulations; private banking accounts opened after October 1, 2003, are generally subject to that requirement as well. See 68 FR 25089–25162 (May 9, 2003).

[68] As with correspondent accounts, where multiple financial institutions maintain a private banking account for a customer—*e.g.*, securities clearing and introducing brokers and futures commission merchants and introducing brokers—each is independently responsible for ensuring the requirements of this rule are met. Any apportionment of functions between such entities should include adequate sharing of information to ensure that each institution can satisfy its obligations under this rule. For example, an introducing firm would be responsible for informing the clearing firm of the customers holding private banking accounts and for obtaining the necessary information from and about these customers, while both firms would be responsible for establishing adequate controls to detect suspicious activity.

[69] See, *e.g.*, Wolfsberg Group, "FAQs on Beneficial Ownership," *supra* note 42, at 2–3; Federal Reserve Guidance, *supra* note 61, Part III.

[70] *Id.*

trust, the financial institution should ascertain which individual (or individuals) controls the funds of the trust, should identify the source of the funds, and should perform due diligence as appropriate.[71] The reason for the focus on nominal and beneficial owners is to ensure that covered financial institutions are adequately and comprehensively addressing the risk involved in accepting and handling a large dollar private banking account for a non-U.S. person.

Some commenters suggested that we allow covered financial institutions to rely on the due diligence conducted by well-regulated foreign intermediaries (*e.g.*, institutions regulated by jurisdictions that are members of the Financial Action Task Force) that open private banking accounts on behalf of their clients. We have determined that covered financial institutions may not rely on foreign intermediaries to satisfy their due diligence obligations under this rule. Because of the unique vulnerabilities for money laundering that exist in the private banking context, it is critical that covered financial institutions conduct their own due diligence with respect to the beneficial owners of private banking accounts.[72] In the event that an intermediary maintains a single private banking account on behalf of two or more foreign individuals, due diligence would be required with regard to all individuals that meet the definition of beneficial owner.[73]

In addition, we note that due diligence is an ongoing obligation. Covered financial institutions will be in the best position to monitor accounts for suspicious transactions and possible money laundering if they are involved in obtaining information about their clients directly. Further, the very nature of a private banking relationship requires that financial institutions obtain extensive information about their clients in order to provide them with personalized financial services.

b. Source of Funds and Purpose and Expected Use of Account

Section 103.178(b)(2) of the 2002 Proposal required covered financial institutions to take reasonable steps to ascertain the source of funds deposited into the private banking account. The final rule retains this language, but adds the requirement that covered financial institutions take reasonable steps to ascertain the purpose for which the private banking account is being established, as well as the anticipated account activity. As discussed below, we believe that the additional obligations of ascertaining the purpose and expected account activity are elements of the 2002 Proposal's requirement to verify the source of funds in an account and to monitor for suspicious activity, and, more generally, are fundamental elements of a sound due diligence program.[74] Such information, which we believe most covered financial institutions currently obtain in the normal course of business when opening a private banking account, establishes a baseline for account activity that will enable a covered financial institution to better detect suspicious activity and to assess situations where additional verification regarding the source of funds may be necessary.

Commenters sought explanation of the due diligence requirement to ascertain the source of funds deposited into the private banking account, and specifically questioned the extent to which verification was required. We do not expect covered financial institutions, in the ordinary course, to verify the source of every deposit placed into every private banking account. However, they should monitor deposits and transactions as necessary to ensure that the activity is consistent with information the institution has received about the client's source of funds and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report any suspicious activity. Such monitoring will facilitate the identification of accounts that warrant additional scrutiny. For example, a single, large deposit may warrant additional scrutiny if it is unusual, given the information a client has provided about the account's purpose and anticipated activity and other expected sources of funds. Likewise, a deposit that comes from an unusual source, such as a charitable fund or foreign government agency trust funds or aid grants, may also warrant further scrutiny. In addition to contacting the client, the financial institution may consider contacting the financial institution that transmitted the funds and the organization that was the source of the funds.

c. Senior Foreign Political Figures

Section 103.178(b)(3) of the 2002 Proposal required covered financial institutions to take reasonable steps to ascertain whether any nominal or beneficial account owner may be a senior foreign political figure.[75] Many commenters argued that the definition of a senior foreign political figure was vague and overly broad and that the 2002 Proposal failed to provide sufficient guidance on implementing the definition. Commenters particularly found the requirement to ascertain a client's close association with senior foreign political figures burdensome, and questioned whether the phrase "widely and publicly known" would require financial institutions to review vast amounts of public information. One commenter suggested waiving altogether the enhanced due diligence requirements for senior foreign political figures from Financial Action Task Force member countries, while allowing covered financial institutions to rely on a certification from citizens of non-Financial Action Task Force member countries regarding whether they are senior foreign political figures unless information to the contrary is received.

We recognize that the term senior foreign political figure is broadly defined in the Act to include immediate family members and close associates, and that reasonable efforts to ascertain an individual's status within this category will require robust due diligence procedures that need to go beyond reliance on a certification. We believe that the due diligence that covered financial institutions currently conduct with respect to private banking clients usually incorporates (or can readily incorporate) reasonable steps to ascertain a client's status as a senior

[71] See, *e.g.*, Wolfsberg Group, "FAQs on Beneficial Ownership," *supra* note 42, at 3.

[72] Senator Levin specifically discussed accounts opened in the name of investment advisers, shell corporations, or trusts on behalf of other persons, noting that "[they] are exactly the types of accounts that terrorists and criminals use to hide their identities and infiltrate U.S. financial institutions. And thus they are exactly the accounts for which U.S. financial institutions need to verify and evaluate the real beneficial owners." 147 Cong. Rec., *supra* note 16, at 11036. See also Federal Reserve Guidance, *supra* note 61, n. 2.

[73] We understand that some financial institutions do not permit intermediaries to open pooled accounts for unrelated persons within the private banking units; instead, they treat the account as an institutional account. If a covered financial institution chooses to allow intermediaries to open these types of accounts within the private banking unit (and if they fall within the definition of private banking account in the final rule), it may want to require the intermediary to establish separate accounts in the name of each beneficial owner to ease the logistical burdens involved in conducting due diligence.

[74] See Basel Committee on Banking Supervision, *supra* note 64 at 6: "The bank should always ask itself why the customer has chosen to open an account in a foreign jurisdiction." See also, Wolfsberg AML Principles on Private Banking, *supra* note 65, at 2, which identifies the "purpose and reasons for opening the account" and "anticipated account activity" among the elements of an effective due diligence program.

[75] The final rule adopts this provision without change, other than substituting "is" for "may be" for clarity.

foreign political figure.[76] We also believe that institutions that provide private banking services as defined in this rule, particularly to foreign individuals, currently obtain considerable information about their clients. For example, in conducting related due diligence on a client's financial and professional background, a financial institution typically will review the sources of income of a client, which may entail reviewing past[77] and present employment history and references from professional associates. This information should generally uncover the client's status as a current or former senior official.

We understand that ascertaining a client's close association with a senior foreign political figure will be more difficult than identifying whether the client holds a senior political position. However, in our view, the term "widely and publicly known" serves as a reasonable limitation on a covered financial institution's obligation to identify close associates who would be readily apparent from a review of publicly available information, as discussed below. Certainly, if a covered financial institution has actual knowledge of such a close associate, the individual also falls within the definition. Covered financial institutions, in fact, may become aware of a client's close association with a senior official simply in the course of gathering financial and professional information about a client.[78] However, we do not expect a covered financial institution to undertake an unreasonable amount of due diligence or to be aware of unknown associations that could not be expected to have been uncovered through the exercise of due diligence ordinarily undertaken when opening or monitoring a private banking account as defined by this rule.

Covered financial institutions, thus, should be guided by the following basic procedures when drafting their due diligence procedures to identify senior foreign political figures. As we believe most covered financial institutions already do, the procedures should require obtaining information regarding employment and other sources of income. First, the institution should seek information directly from the individual regarding possible senior foreign political figure status. Second, the institution should check references, as appropriate, to determine whether the individual holds or has previously held a senior political position or may be a close associate of a senior foreign political figure. Third, the institution should also make reasonable efforts to review public sources of information in meeting this obligation.

Many commenters sought clarification as to the 2002 Proposal's reference to publicly available sources of information, and as to what would constitute reasonable steps to review such information. The range of publicly available sources that should be consulted will vary depending upon the circumstances of the particular case. In virtually all cases, covered financial institutions will have an obligation to check the name of the prospective private banking client against databases of public information that are reasonably accessible and available. These include U.S. Government databases, major news publications and commercial databases available on the Internet, and fee-based databases, as appropriate. The country of residence of the private banking client is also relevant. We do not expect that, as a general procedure, a covered financial institution will need to review the local language newspapers in every country in which its private banking clients reside, although reviewing such newspapers could be prudent in an unusual situation, such as when the financial institution is not familiar with the country that the private client is from and the country is not generally covered in the press. Finally, we note that there are existing and developing databases of foreign political figures that may assist covered financial institutions with this inquiry.[79]

In the event that the covered financial institution learns (either during the initial establishment of the account or thereafter) of information indicating that a client may be a senior foreign political figure as defined in the rule, it should exercise additional, reasonable diligence in seeking to confirm whether the individual is, in fact, a senior foreign political figure. One of the first steps is to seek confirmation from the individual. If the individual denies holding or having held a political position or being closely associated with or in the immediate family of someone who has held or currently holds a political position, it still may be necessary to take further reasonable steps. These additional steps may include, for example, making more pointed inquiries of other references, obtaining additional information from branches of the covered financial institution that may be operating in the home country of the client, and making reasonable efforts to consult publicly available sources of information, as described above. If, after reasonable diligence, the covered financial institution does not learn of any information indicating that a nominal or beneficial owner may be a senior foreign political figure, it may conclude that the individual is not a senior foreign political figure.[80]

The Act and this final rule require that covered financial institutions establish controls and procedures that include reasonable steps to ascertain the status of an individual as a senior foreign political figure and to conduct enhanced scrutiny of accounts held by these individuals. We recognize that covered financial institutions applying reasonable due diligence procedures in accordance with this rule may not be able to identify in every case individuals who qualify as senior foreign political figures, and, in particular, their close associates (nor does the rule require that they detect this fact in every case), and thus may not apply enhanced scrutiny to all such accounts. Rather, the rule requires a program that ensures that the institution take reasonable steps to ascertain whether a private banking account client is a senior foreign political figure.

[76] The Department of the Treasury, the Federal banking regulators, and the Department of State jointly issued "Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption" in January 2001, available at *http://www.treas.gov/press/releases/ls1123.htm*.

[77] Past employment history may be relevant in determining source of income to the extent a client is receiving a pension or some other income.

[78] For example, when conducting due diligence on a client and his or her lines of business, a covered financial institution may uncover the fact that a client is a business partner of a senior official. This would likely qualify the individual as a close associate. Likewise, foreign clients may be referred to a covered financial institution by an existing client. If the existing client is a senior foreign political figure, that may be an indication that the prospective client is a close associate.

[79] For example, a list of high level foreign officials is available at: *http://www.odci.gov/cia/publications/chiefs/index.html*.

[80] Section 103.178(c)(1) of the 2002 Proposal stated that, in performing the required due diligence,

"(i) If a covered financial institution learns of information indicating that a particular individual may be a senior foreign political figure, it should exercise reasonable diligence in seeking to determine whether the individual is, in fact, a senior foreign political figure.

(ii) If a covered financial institution does not learn of any information indicating that an individual may be a former senior foreign political figure, and the individual states that he or she is not a former senior foreign political figure, the financial institution may rely on such statement in determining whether the account is subject to the due diligence requirements of paragraph (c)(2) of this section." 2002 Proposal, *supra* note 2, at 37744.

Because the substance of this subparagraph is in effect subsumed within a covered financial institution's obligations under section 103.178(b)(2), it has been eliminated from the text of the final rule.

Moreover, if the institution's program is reasonably designed to make this determination, and the institution administers the program effectively, then the institution should generally be able to detect, report, and take appropriate action where suspected money laundering is occurring with respect to these accounts, even in cases where the financial institution has not been able to identify the account holder as a senior foreign political figure warranting enhanced scrutiny.

d. Reporting Known or Suspected Money Laundering

Section 103.178(b)(4) of the 2002 Proposal required that the due diligence program of covered financial institutions ensure that the institution take reasonable steps to report, in accordance with applicable law and regulation, any known or suspected violation of law conducted through or involving a private banking account with a non-U.S. citizen. For example, if a covered financial institution detects activity that is unusual for the account and client, and cannot obtain a satisfactory response from the client and/or other sources, it may "know, suspect, or have reason to suspect" that money laundering or activity with "no apparent lawful purpose" is occurring, prompting the filing of a suspicious activity report.[81] Other appropriate action may include suspending account activity or closing the account.

In accord with the modification and clarification discussed above pertaining to source of funds in connection with section 103.178(b)(2), we have similarly clarified section 103.178(d). Specifically, we have incorporated the fact that, in order to adequately review for possible money laundering and suspicious activity, a covered financial institution must take reasonable steps to ensure that the information it obtains about the source of funds, as well as about the stated purpose and the expected use of the account, is consistent with the actual activity in the account. This paragraph otherwise remains unchanged in the final rule, except that the phrase "money laundering or suspicious activity" replaces the phrase "violation of law" for consistency with section 103.178(a) and with 31 U.S.C. 5318(i).

3. *Enhanced scrutiny.* Section 103.178(c) of the 2002 Proposal established certain special requirements with respect to senior foreign political figures. Section 103.178(c)(2) generally required covered financial institutions to establish due diligence programs for accounts held by senior foreign political figures that included policies and procedures reasonably designed to detect transactions that may involve the proceeds of foreign corruption. As noted in the preamble to the 2002 Proposal, covered financial institutions should involve senior management when deciding to accept a senior foreign political figure as a private banking client and should ensure that information regarding the account is available for review not only by the liaison but also by senior management.

Such internal controls are particularly important in the private banking context because of the potentially close relationships managers may develop with private banking customers. In fact, money laundering has been shown to occur through private banking accounts established for senior foreign political figures when financial institutions have failed to apply internal controls, allowing liaisons to apply insufficient, non-impartial scrutiny to the activities of their private banking clients.[82]

We received two comments on this section. One commenter sought specific guidance as to how covered financial institutions can detect the proceeds of foreign corruption, while a congressional commenter asked us to specify in the rule that covered financial institutions are required to conduct enhanced scrutiny of accounts held by senior foreign political figures in accordance with the statutory provisions of 31 U.S.C. 5318(i). In response to the latter comment, we have amended the text of this provision (redesignated as section 103.178(c)(1) of this final rule) to specifically require enhanced scrutiny, as follows "In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption."

As with the minimum due diligence program prescribed under section 103.178(b), we expect that covered financial institutions will apply a risk-based enhanced scrutiny program. Reasonable steps to perform enhanced scrutiny may include the following: consulting publicly available information regarding the home jurisdiction of the client;[83] contacting, where applicable, branches of the U.S. financial institution operating in the home jurisdiction of the client to obtain additional information about the client and the political environment; and conducting greater scrutiny of the client's employment history and sources of income. For example, wire transfers from a government account to the personal account of a government official with signature authority over the government account should raise an institution's suspicions of possible political corruption.[84] If a covered financial institution's review of major news sources indicates that a client may be or is involved in political corruption, the institution should review that client's account for unusual activity.

In addition, when the client is a former senior foreign political figure, a risk-based program should involve weighing such factors as the length of time the client has been out of office, the size of the account, and any information obtained from public sources, as well as other information obtained through the due diligence process. Thus, if a former official has been out of office for a substantial length of time, and a review of major news publications provides no indication of political corruption or continued involvement in politics, then less scrutiny would be reasonable.

Section 103.178(c)(3) of the 2002 Proposal set forth the definition of "proceeds of foreign corruption." No comments were submitted regarding this proposed definition, and it (redesignated as section 103.178(c)(2)) is unchanged in the final rule.

4. *Special procedures.* Section 103.178(d) of the 2002 Proposal contained special procedures to be included in the covered financial institution's due diligence program for private banking accounts, addressing situations where appropriate due diligence cannot be performed,

[81] *See* 31 CFR 103.17 to 103.19.

[82] We recently imposed a civil penalty against a bank for, among other things, its failure to implement internal controls in its private banking department. Lax supervision by the bank enabled the relationship manager to engage in suspicious transactions involving a private banking account held by a senior foreign political figure. *See* Matter of Riggs Bank, N.A., No. 2004–01 (May 13, 2004), available at *http://www.fincen.gov/riggsassessment3.pdf.* In another publicized case, a liaison pled guilty to helping to launder over $11 million in narcotics proceeds through private banking accounts she managed for an influential Mexican governor. The liaison admitted to helping to disguise the identity of her client and the source of these funds by establishing accounts in the names of fictitious nominee account holders. She also admitted to intentionally avoiding asking questions of her client or informing her superiors regarding these activities. *U.S.* v. *Madrid, et al.*, No. 02 CR 0414 (S.D.N.Y. August 25, 2005).

[83] For example, AAA FLASH, a weekly electronic newsletter sponsored by United States Agency for International Development, details corruption around the world and can be accessed at *http://www.respondanet.com/english.*

[84] See Matter of Riggs Bank, *supra* n. 82.

including when the institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account. No comments were submitted regarding this provision, which is unchanged in this final rule.

5. *Effective dates.* Although the 2002 Proposal did not address the issue of an effective date, as with correspondent accounts, many commenters noted the difficulty of complying with the requirements of 31 U.S.C. 5318(i) pertaining to private banking accounts, especially with regard to their application to previously existing accounts, and urged us to allow a sufficient transition period. We are mindful of the burden that will result from the statutory requirement that the provision applies to all private banking accounts, regardless of when they were opened. The final rule contains a new section 103.176(e) that provides for the effective dates of the obligations under this section: effective 90 days after the date of publication of the final rule, the requirements of the final rule will apply to private banking accounts opened on or after that date; and, effective 270 days after the date of publication of the final rule, the rule's requirements will apply to all private banking accounts opened prior to the date that is 90 days after the date of publication of the final rule.

For all of the reasons explained above in section III.B.4., the final rule contains additional applicability rules to ensure consistency with the requirements of the Interim Rule until the effective dates of the final rule are triggered.

Paragraph 103.178(e)(2) contains special applicability dates requiring banks, broker-dealers, futures commission merchants, and introducing brokers to continue to apply the requirements of 31 U.S.C. 5318(i)(3) to private banking accounts until the 90 and 270-day implementation dates of paragraph 103.178(e)(1) are triggered. This preserves the status quo created by the provisions of the Interim Rule found at 31 CFR 103.181 and 103.182 until the provisions of this final rule go into effect.

Paragraph 103.178(e)(3) continues to exempt trust banks or trust companies that have a federal regulator, and mutual funds from the requirements of 31 U.S.C. 5318(i)(3) until the 90 and 270-day implementation dates of paragraph 103.178(e)(1) are triggered.

Finally, paragraph 103.178(e)(4) contains a general exemption from the due diligence requirements for private banking accounts contained in 31 U.S.C. 5318(i)(3) for all financial institutions which are not defined in the final rule as covered financial institutions. This exemption replaces without substantive change the provisions of the Interim Rule found at 31 CFR 103.183.

In light of the special implementation provisions contained in the text of the final rule, the Interim Rule, codified at 31 CFR 103.181 through 31 CFR 103.183 will no longer be effective on February 3, 2006.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule provides guidance to financial institutions concerning the mandated due diligence and enhanced due diligence requirements in section 312 of the Act. Moreover, most of the financial institutions covered by the rule tend to be larger institutions. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

This final rule is not a "significant regulatory action" as defined in Executive Order 12866, and, as such, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Public Law 107–56, 115 Stat. 307.

■ 2. Section 103.120 of Subpart I of part 103 is amended as follows:

■ a. Paragraph (b) is amended by adding "the requirements of §§ 103.176 and 103.178 and" immediately after the words "complies with".

■ b. Paragraph (c)(1) is amended by adding "the requirements of §§ 103.176 and 103.178 and" immediately after the words "complies with".

■ 3. Subpart I of part 103 is amended by revising § 103.175 to read as follows:

§ 103.175 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 103.176 through 103.185:

(a) *Attorney General* means the Attorney General of the United States.

(b) *Beneficial owner* of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund the account or the entitlement to the funds of the account alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

(c) *Certification and recertification* mean the certification and recertification forms described in appendices A and B, respectively, to this subpart.

(d) *Correspondent account.* (1) The term *correspondent account* means:

(i) For purposes of § 103.176(a), (d) and (e), an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution; and

(ii) For purposes of §§ 103.176(b) and (c), 103.177 and 103.185, an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

(2) For purposes of this definition, the term *account:*

(i) As applied to banks (as set forth in paragraphs (f)(1)(i) through (vii) of this section):

(A) Means any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and

(B) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit;

(ii) As applied to brokers or dealers in securities (as set forth in paragraph (f)(1)(viii) of this section) means any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral;

(iii) As applied to futures commission merchants and introducing brokers (as set forth in paragraph (f)(1)(ix) of this section) means any formal relationship established by a futures commission merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity; and

(iv) As applied to mutual funds (as set forth in paragraph (f)(1)(x) of this section) means any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(e) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 103.177 and 103.185.

(f) *Covered financial institution* means: (1) For purposes of §§ 103.176 and 103.178:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

(iii) An agency or branch of a foreign bank in the United States;

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

(2) For purposes of §§ 103.177 and 103.185:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank or trust company;

(iii) A private banker;

(iv) An agency or branch of a foreign bank in the United States;

(v) A credit union;

(vi) A savings association;

(vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(g) *Foreign bank.* The term *foreign bank* has the meaning provided in § 103.11(o).

(h) *Foreign financial institution.* (1) The term *foreign financial institution* means:

(i) A foreign bank;

(ii) Any branch or office located outside the United States of any covered financial institution described in paragraphs (f)(1)(viii) through (x) of this section;

(iii) Any other person organized under foreign law (other than a branch or office of such person in the United States) that, if it were located in the United States, would be a covered financial institution described in paragraphs (f)(1)(viii) through (x) of this section; and

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A currency dealer or exchanger; or

(B) A money transmitter.

(2) For purposes of paragraph (h)(1)(iv) of this section, a person is not "engaged in the business" of a currency dealer, a currency exchanger or a money transmitter if such transactions are merely incidental to the person's business.

(i) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(j) *Non-United States person or non-U.S. person* means a natural person who is neither a United States citizen nor is accorded the privilege of residing permanently in the United States pursuant to title 8 of the United States Code. For purposes of this paragraph (j), the definition of *person* in § 103.11(z) does not apply, notwithstanding paragraph (m) of this section.

(k) *Offshore banking license* means a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

(l) *Owner.* (1) The term *owner* means any person who, directly or indirectly:

(i) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or to select directors (or individuals exercising similar functions).

(m) *Person* has the meaning provided in § 103.11(z).

(n) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs one or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(o) *Private banking account* means an account (or any combination of accounts) maintained at a covered financial institution that:

(1) Requires a minimum aggregate deposit of funds or other assets of not less than $1,000,000;

(2) Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and

(3) Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account.

(p) *Regulated affiliate.* (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(q) *Secretary* means the Secretary of the Treasury.

(r) *Senior foreign political figure.* (1) The term *senior foreign political figure* means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) *Senior official or executive* means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) *Immediate family member* means spouses, parents, siblings, children and a spouse's parents and siblings.

(s) *Territories and Insular Possessions* has the meaning provided in § 103.11(tt).

(t) *United States* has the meaning provided in § 103.11(nn).

■ 4. Subpart I of part 103 is amended by adding § 103.176 to read as follows:

§ 103.176 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) *In general.* A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) *Enhanced due diligence for certain foreign banks.* [Reserved]

(c) *Foreign banks to be accorded enhanced due diligence.* [Reserved]

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Correspondent accounts established on or after April 4, 2006.* Effective April 4, 2006, the requirements of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before April 4, 2006.* Effective October 2, 2006, the requirements of this section shall apply to each correspondent account established before April 4, 2006.

(2) *Special rules for certain banks.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institution listed in § 103.175(f)(1)(i) through (vi). In addition, until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 103.175(f)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in § 103.175(f)(1)(vii) through (x) until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section. The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to any covered financial institution listed in § 103.175(f)(1)(vii) through (x) until otherwise provided by the Financial Crimes Enforcement Network in a final rule published in the

Federal Register with respect to these requirements.

(4) *Exemptions*—(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or § 103.11(n) is exempt from the due diligence and enhanced due diligence requirements of 31 U.S.C. 5318(i)(1) and (2) pertaining to correspondent accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

■ 5. Subpart I of part 103 is amended by adding § 103.178 to read as follows:

§ 103.178 Due diligence programs for private banking accounts.

(a) *In general.* A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart.

(b) *Minimum requirements.* The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money laundering or suspicious activity conducted to, from, or through a private banking account.

(c) *Special requirements for senior foreign political figures.* (1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term *proceeds of foreign corruption* means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) *Private banking accounts established on or after April 4, 2006.* Effective April 4, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) *Private banking accounts established before April 4, 2006.* Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before April 4, 2006.

(2) *Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in § 103.175(f)(1)(i) through (vi), (viii), or (ix).

(3) *Special rules for federally regulated trust banks or trust companies, and mutual funds.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in § 103.175(f)(1)(vii), or (x).

(4) *Exemptions*—(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

■ 6. Subpart I of part 103 is amended by removing §§ 103.181, 103.182, and 103.183.

Dated: December 15, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 06–5 Filed 1–3–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network is issuing this proposed Bank Secrecy Act regulation to implement section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("Act"), which requires U.S. financial institutions to conduct enhanced due diligence with regard to correspondent accounts established, maintained, administered, or managed for certain types of foreign banks. We originally published a notice of proposed rulemaking seeking to implement section 312 in its entirety on May 30, 2002. Due to the significant number of issues raised during the comment period, we have determined that it is necessary and appropriate to issue another notice of proposed rulemaking ("Proposal") to address issues associated with the enhanced due diligence provisions. A final rule implementing all other provisions of section 312 is published elsewhere in this separate part of the **Federal Register**.

DATES: Written comments must be submitted on or before March 6, 2006.

ADDRESSES: You may submit comments, identified by Regulatory Information Number 1506–AA29, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov*. Include "Regulatory Information Number 1506–AA29" in the subject line of the message.
- Mail: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include "Regulatory Information Number 1506–AA29" in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. We will consider all comments postmarked before the close of the comment period in developing a final regulation. Comments received after the close of the comment period will be considered if possible, but their consideration cannot be assured. Comments may be inspected at the Financial Crimes Enforcement Network between 10 a.m. and 4 p.m. in the Financial Crimes Enforcement Network reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephone at (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

Section 312 of the Act amended the Bank Secrecy Act to add a new subsection (i) to 31 U.S.C. 5318. This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for a non-U.S. person to subject such accounts to certain anti-money laundering measures. In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through these accounts.

In addition to the general due diligence requirements, which apply to all correspondent and private banking accounts for non-U.S. persons, section 5318(i)(2) requires enhanced due diligence measures for correspondent accounts established, maintained, managed, or administered for a foreign bank operating under an offshore banking license,[1] operating under a license issued by a country designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States concurs, or operating under a license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns. This Proposal addresses these enhanced due diligence requirements.

A. The 2002 Proposal

On May 30, 2002, we published in the **Federal Register** a notice of proposed rulemaking ("2002 Proposal") to implement section 5318(i).[2] In the 2002 Proposal, we sought to take the broad statutory mandate of section 5318(i) and to translate it into specific regulatory directives for financial institutions to apply. The 2002 Proposal set forth a series of due diligence procedures that financial institutions subject to the rule must apply to correspondent accounts and private banking accounts for non-U.S. persons.

B. The Interim Rule

We received comments in response to the 2002 Proposal that raised many significant concerns regarding the numerous definitions in the 2002 Proposal, the scope of the requirements of section 5318(i), and the financial institutions that would be subject to them. Section 312(b)(2) of the Act provides that section 5318(i) of the Bank Secrecy Act took effect on July 23, 2002, regardless of whether final rules had been issued by that date. In order to have adequate time to review the comments, to determine the appropriate resolution of the many issues raised, and to give direction to the affected financial institutions, we issued an interim final rule ("Interim Rule")[3] on July 23, 2002, in which we exercised our authority under 31 U.S.C. 5318(a)(6) to defer temporarily the application of 31 U.S.C. 5318(i) to certain financial institutions. For those financial institutions that were not subject to the deferral, we set forth interim guidance for compliance with the statute by delineating the scope of coverage, duties, and obligations under that provision, pending issuance of a final rule.

C. The Final Rule

Published elsewhere in this separate part of the **Federal Register** is a final rule implementing all of the provisions of section 5318(i) with the exception of section 5318(i)(2)'s enhanced due

[1] "Offshore banking license" is defined in 31 CFR 103.175(k) (which was adopted in the final rule published elsewhere in this separate part of the **Federal Register**) to mean a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

[2] See 67 FR 37736 (May 30, 2002).

[3] 67 FR 48348 (July 23, 2002).

diligence requirement for correspondent accounts established or maintained for certain foreign bank customers.

Due to the issuance of this Proposal, the final rule maintains the status quo that existed under the Interim Rule with respect to the enhanced due diligence provisions of section 5318(i)(2). Specifically, until otherwise provided in a final rule issued pursuant to this Proposal, most banking organizations must continue to comply with 31 U.S.C. 5318(i)(2), which requires enhanced due diligence for certain correspondent accounts. However, securities broker-dealers, futures commission merchants, introducing brokers, and mutual funds, as well as trust banks and trust companies that have a federal regulator, continue to be exempt from compliance with the enhanced due diligence provisions for correspondent accounts until a final rule is issued pursuant to this Proposal.

II. The Proposed Rule

A. Overview

Section 5318(i) generally requires U.S. financial institutions to apply appropriate, specific, and, where necessary, enhanced due diligence to correspondent accounts established or maintained for foreign banks. Section 5318(i)(2) specifies enhanced due diligence procedures that must be performed with regard to foreign banks operating under any of the following three types of licenses: (1) An offshore banking license; (2) a license issued by a foreign country designated as non-cooperative with international money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to that group or organization concurs; or (3) a license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns. The enhanced due diligence procedures required by section 5318(i)(2) include taking reasonable steps to: (1) Conduct enhanced scrutiny of the correspondent account to guard against money laundering and to report suspicious activity; (2) ascertain whether the foreign bank provides correspondent accounts to other foreign banks that use in any way the correspondent account established or maintained by the covered financial institution, and, if so, conduct appropriate due diligence; and (3) identify the owners of the foreign bank if the foreign bank's shares are not publicly traded.

The 2002 Proposal recommended the exclusion of certain foreign banks operating under offshore banking licenses from the enhanced due diligence requirements. Specifically, we recommended excluding from the enhanced due diligence requirements offshore-licensed branches of foreign banks chartered in a jurisdiction where one or more foreign banks have been determined by the Board of Governors of the Federal Reserve System ("Federal Reserve") to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction ("the Consolidated Exception"), so long as such foreign banks did not fall within either of the other two categories of foreign banks for which the enhanced due diligence requirements apply.[4]

Commenters were strongly divided over the Consolidated Exception. A joint comment letter from several members of Congress urged us to eliminate the Consolidated Exception, calling it unfounded and contrary to the legislative intent of section 5318(i), which, in the congressional commenters' view, did not provide for any exceptions. The congressional comment letter reiterated concerns about the money laundering risks associated with offshore banks, such as the lack of regulatory oversight, excessive secrecy laws, and the general lack of transparency. Other commenters supported the Consolidated Exception as a reasonable basis to focus anti-money laundering programs on higher-risk offshore banks, but suggested that the exception was not broad enough because a determination by the Federal Reserve that one or more foreign banks are subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in a jurisdiction is limited to those foreign banks that have sought to establish U.S. banking operations since 1991. These commenters asked that we address this potential inequity by, for example, expanding the jurisdictions included in the exception or by implementing a process for evaluating the level of supervision in other jurisdictions and determining whether banks chartered in such jurisdictions should also be exempted from mandatory enhanced due diligence. In addition, some commenters requested that we extend the Consolidated Exception to offshore-licensed subsidiaries and affiliates, in addition to the branches, of foreign banks that are chartered in a jurisdiction where one or more foreign banks have been determined to be subject to comprehensive supervision on a consolidated basis.

We recognize, as reflected in many of the comments, that most categorical exemptions, including the proposed Consolidated Exception, may be both over- and under-inclusive, thereby creating anomalies in the level of scrutiny to be applied to offshore banks. Further, we have some concerns as to whether the Consolidated Exception sufficiently accounts for the risks associated with offshore banking. We also understand that the Federal Reserve's determination that a foreign bank is subject to comprehensive supervision on a consolidated basis in its home jurisdiction does not focus primarily on the quality, risks, or appropriateness of the foreign jurisdiction's anti-money laundering regime, although those factors are taken into consideration as a general matter.

Consequently, we have not adopted the Consolidated Exception as described in the 2002 Proposal. Under the current Proposal, all correspondent accounts for foreign banks set forth in 5318(i)(2) would be subject to a certain degree of enhanced due diligence.

At the same time, we recognize that not all such correspondent accounts present the same type or level of risk, and that to impose an obligation of applying the same enhanced due diligence procedures in every case would require covered financial institutions to allocate limited resources inefficiently, thereby undermining the effectiveness of their anti-money laundering programs and the objectives of this statutory provision. Accordingly, we have determined that it is appropriate to propose a final rule that makes it clear that covered financial institutions should apply enhanced due diligence with regard to the three categories of foreign banks on a risk-basis, as contemplated by the statute.

Under this risk-based approach, covered financial institutions would determine the nature and extent of the risks posed by the correspondent accounts for the foreign banks identified in 31 U.S.C. 5318(i)(2)(A) and the corresponding extent of the enhanced due diligence that is necessary and appropriate to apply to control those risks. Such an approach tailors the

[4] As of October 2005, the Federal Reserve has made a determination that one or more foreign banks in the following jurisdictions are subject to comprehensive supervision or regulation on a consolidated basis: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Finland, France, Germany, Greece, Hong Kong Special Administrative Region, Ireland, Israel, Italy, Japan, Korea, Mexico, the Netherlands, Norway, Portugal, Spain, Switzerland, Taiwan, Turkey, and the United Kingdom.

required due diligence to the specific risks, enhancing protection and avoiding the problems created by a categorical exemption. This approach is consistent with the overall risk-based approach of the Bank Secrecy Act's anti-money laundering program and suspicious activity reporting rules and is consistent with the plain language and legislative intent of the statute.

B. Enhanced Due Diligence

Pursuant to the proposed rule, a covered financial institution must establish procedures to assess the risks involved with each correspondent account that is subject to enhanced due diligence and must take reasonable steps to accomplish the following.

i. Enhanced scrutiny to guard against money laundering. Section 103.176(b)(1) requires that a covered financial institution's due diligence program ensure that the institution takes reasonable steps to conduct certain risk-based enhanced scrutiny of any correspondent account statutorily deemed to be high-risk in order to guard against money laundering and to report any suspicious transactions. The enhanced due diligence will vary based on the covered financial institution's assessment of the money laundering risk posed by the particular correspondent account established or maintained for a foreign correspondent bank.

Pursuant to section 103.176(b)(1)(i) and (ii), the covered financial institution, shall, when appropriate based on its risk assessment, obtain and review documentation relating to the foreign correspondent bank's anti-money laundering program, and shall consider and evaluate the extent to which that program appears to be reasonably designed to detect and prevent money laundering. We do not contemplate that the covered financial institution would conduct an audit of the foreign correspondent bank's anti-money laundering program. Rather, we expect that the covered financial institution would conduct, as appropriate, a review of the foreign correspondent bank's written anti-money laundering program (or a description of the program) to determine whether the program appears to be reasonably designed to accomplish its purpose. With regard to this requirement, we have determined that it may not be necessary in every instance, especially with a well-regulated foreign correspondent bank that the covered financial institution knows well and has been doing business with for an extended time, for the covered financial institution to actually obtain and analyze that foreign bank's anti-money laundering program.

Under section 103.176(b)(1)(iii), the covered financial institution shall, as appropriate, monitor transactions to, from or through the correspondent account in a manner reasonably designed to detect money laundering and other suspicious activity. This requirement means that, at a minimum, a covered financial institution should have reasonable procedures to monitor the overall activity through the account and to enable the covered financial institution to detect unusual and suspicious activity, including activity that is not in accord with the type, purpose, and anticipated activity of the account. In some cases, covered financial institutions will be expected to apply greater due diligence, as appropriate, in accordance with their risk assessment. Monitoring accounts is an important element of an enhanced due diligence program, and the covered financial institution must determine, on a risk-basis, the most effective scope and manner for such monitoring (e.g., computerized or manual, on an individual account basis or a product activity level). The monitoring procedures must be designed to reflect the additional risk posed by these categories of accounts above and beyond those posed by accounts not subject to the enhanced due diligence requirement.

Section 103.176(b)(1)(iv) requires a covered financial institution to obtain information about the identity of persons with authority to direct transactions through the correspondent account and the sources and beneficial ownership of funds or other assets in the account. This obligation, however, applies only to payable-through accounts.[5]

The extent to which enhanced scrutiny may be appropriate will depend on the covered financial institution's risk assessment of the particular correspondent account. For example, foreign banks operating under an offshore banking license pose a range of money laundering risks, and covered financial institutions will need to consider a variety of factors in determining the appropriate level of enhanced scrutiny. Such factors could include whether such banks are branches or affiliates of financial institutions that are subject to supervision in their home jurisdiction, which might reduce the risks of money laundering, or whether they are offshore banks unaffiliated with any other supervised financial institution, in which case the risks may well be greater.

ii. Foreign Bank Customers. Section 103.176(b)(2) requires that a covered financial institution determine whether the foreign correspondent bank in turn maintains correspondent accounts for other foreign banks ("nested banks") for which the U.S. correspondent account is used to process transactions. If so, the covered financial institution must take reasonable steps to obtain information relevant to assess and minimize money laundering risks associated with the nested banks, including, as appropriate, obtaining the identity of the nested bank customers and conducting due diligence with regard to them.

Under this provision, reasonable steps would include collecting information sufficient to describe the foreign bank customers of the foreign correspondent bank. We expect that a covered financial institution will request its foreign correspondent banks to provide information about their foreign bank customer base and will consult readily available banking reference guides. Such information will enable covered financial institutions to identify potential risks and to determine whether it is necessary to take the additional steps of identifying and conducting due diligence with regard to individual nested banks. Monitoring wire transfer activity originating from the foreign correspondent bank, for example, can be an important component of a robust program, as U.S. banks may be able to identify nested correspondent account activity through a review of wire transfers and payment instructions.

The covered financial institution's due diligence program should contain procedures for assessing when the covered financial institution will identify nested banks and for assessing the risk posed by any such nested accounts. Relevant factors may include the type of nested bank, the anti-money laundering and supervisory regime of the nested bank's home jurisdiction, and the activity taking place through the U.S. correspondent account. The program should also contain procedures for determining the circumstances when due diligence with regard to the nested bank would be appropriate. Further, the covered financial institution should consider the extent to which the foreign correspondent bank's anti-money

[5] Section 311 of the Act defines a payable-through account as "an account * * * opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States." 31 U.S.C. 5318A(e)(1)(C).

laundering program appears adequate to prevent the nested bank account from being used for money laundering. If the program does not appear adequate, then the covered financial institution may itself need to perform due diligence on the nested bank.

Finally, if a foreign correspondent bank refuses to provide information about its nested banks, the covered financial institution will have to determine whether, in light of the reasons given for such refusal and the risk associated with the foreign correspondent bank, it is prudent to establish or maintain the correspondent account.

iii. Identification of foreign correspondent banks' owners. Pursuant to section 103.176(b)(3), the covered financial institution must obtain the identity of owners of any foreign correspondent bank whose shares are not publicly traded. The 2002 Proposal defined the term "owner" for this purpose to mean any person who directly or indirectly owns, controls, or has the power to vote five (5) percent or more of any class of securities of a foreign bank, and defined the term "publicly traded" to mean shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority, as defined in the Securities Exchange Act of 1934. Several commenters suggested that the definition of ownership should be consistent with the definition contained in the rule implementing sections 313 and 319 of the Act, which requires a 25 percent threshold for ownership. Others thought that the threshold should be at least 10 or 15 percent. In our view, because this requirement applies to foreign banks that are deemed to present a high risk of money laundering by virtue of their location or the license under which they operate, the threshold should be lower than the threshold that applies for determining the ownership of foreign banks having correspondent accounts with covered financial institutions under the rules implementing sections 313 and 319 of the Act. However, we agree that a five (5) percent threshold is too low. Accordingly, we propose a 10 percent threshold in this Proposal.

C. Foreign Banks To Be Accorded Enhanced Due Diligence

Pursuant to 103.176(c), a covered financial institution would be required to apply enhanced due diligence measures to three categories of foreign banks listed in 31 U.S.C. 5318(i)(2). These categories consist of foreign banks operating under three types of licenses: (1) An offshore banking license; (2) a license issued by a foreign country designated as non-cooperative with international money laundering principles or procedures by an intergovernmental group or organization, of which the United States is a member, and with which designation the U.S. representative concurs;[6] or (3) a license issued by a country that the Secretary of the Treasury has designated as warranting special measures due to money laundering concerns.

D. Special Procedures

We are proposing to modify 103.176(d) slightly simply to take into account that the special procedures required in this paragraph must be incorporated into the covered financial institution's enhanced due diligence program as well as its general due diligence program.

III. Request for Comments

We invite comments on all aspects of this proposal.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule provides guidance to financial institutions concerning certain mandated enhanced due diligence requirements in section 312 of the Act. Moreover, most of the financial institutions covered by the rule tend to be larger institutions. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Accordingly, a regulatory assessment is not required.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *ahunt@omb.eop.gov*), with a copy to the Financial Crimes Enforcement Network by mail or the Internet at the addresses previously specified. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.176(b)(i) and 103.176(b)(iv)(A). The information will be used by federal agencies to verify compliance by covered financial institutions with the provisions of 31 CFR 103.176. The collection of information is mandatory. The likely recordkeepers are mostly banking institutions; (2) securities broker-dealers; (3) futures commission merchants and introducing brokers in commodities; and (4) mutual funds.

Description of Recordkeepers: Covered financial institutions as defined in 31 CFR 103.175(f)(1);

Estimated Number of Recordkeepers: There are approximately 28,163 covered financial institutions, consisting of 9,000 commercial banks and savings associations, 10,000 credit unions, 2,400 mutual funds, 1,452 introducing brokers, 151 futures commission merchants, 5,160 securities broker-dealers.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is one hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 28,163 annual burden hours.

We specifically invite comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology;

[6] The only intergovernmental organization that currently designates countries as non-cooperative with international anti-money laundering standards is the Financial Action Task Force on Money Laundering. The Financial Action Task Force designation of non-cooperative jurisdictions can be found on the Financial Action Task Force Web site (*www.oecd.org/fatf*). The United States has concurred in all Financial Action Task Force designations made to date.

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, we are proposing to amend subpart I of 31 CFR part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart I, amend § 103.176 as follows:

a. Revise paragraph (b),

b. Revise paragraph (c), and

c. Revise paragraph (d).

The revisions read as follows:

§ 103.176 Due diligence programs for correspondent accounts for foreign financial institutions.

* * * * *

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and reviewing documentation relating to the foreign bank's anti-money laundering program;

(ii) Considering whether such program appears to be reasonably designed to detect and prevent money laundering;

(iii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iv)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iv)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution, and, if so, take reasonable steps to obtain information relevant to assess and minimize money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(*1*) Members of the same family shall be considered to be one person; and

(*2*) *Same family* has the meaning provided in § 103.175(l)(2)(ii).

(B) *Publicly traded* means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

* * * * *

Dated: December 15, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 06–6 Filed 1–3–06; 8:45 am]

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Federal Register

Wednesday,
January 4, 2006

Part IV

Department of Agriculture

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Purchaser Elects Government Road Construction; Free Use to Individuals; Delegation of Authority; Final Rule and Interim Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC40

Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Purchaser Elects Government Road Construction

AGENCY: Forest Service, USDA.

ACTION: Direct Final rule.

SUMMARY: This direct final rule raises the total specified road construction cost threshold for a small business concern road election from $20,000 to $50,000. Congress raised the limit to $50,000 via the Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; Sec. 329(c)). The Supplemental Appropriations Act also eliminated the restriction, which precluded small business concerns in the State of Alaska from exercising the road election option. The Forest Service implemented this change upon passage of the law, and corrected agency handbook direction, but the CFR references to these minimum values were not changed. This direct final rule corrects this policy oversight. Obsolete references to purchaser credit are also being eliminated.

DATES: This direct final rule is effective March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, at (202) 205–0858, or Richard Fitzgerald, Forest Management Staff, (202) 205–1753.

SUPPLEMENTARY INFORMATION:

Background

One of the components a timber sale may include is the construction of new specified roads in order to access areas where timber will be removed. Road construction can be a significant cost to a small business timber purchaser. The National Forest Management Act of 1976 (Pub. L. 94–588) section 14(i) allowed small business concerns to elect to have the Forest Service construct specified roads for a timber sale. The agency promulgated regulations in 36 CFR part 223. 36 CFR 223.84 allows for small business concerns to elect to have the Forest Service contract for the construction of new specified roads. 36 CFR 223.41 requires that if a small business concern does elect to have the Forest Service contract for the road construction, the small business must reimburse the government for the estimated costs of construction through higher stumpage payments. 36 CFR 223.82 requires that the Forest Service include notice of this option in the contents of advertisements and bid forms for timber sales. A small business concern can only elect to have the Forest Service build the roads if the specified road construction was valued at $20,000 or more. 36 CFR 223.41 and 36 CFR 223.82 both included this $20,000 value. On October 21, 1998, the Supplemental Appropriations Act for Fiscal year 1999 (Pub. L. 105–277) became law. Section 329(c) included an increase in the value of the specified road construction to $50,000 or more before a small business concern could elect to have the Forest Service contract for construction of specified roads. It also eliminated an earlier restriction that precluded small business concerns in the State of Alaska from the specified road election. This final rule updates 36 CFR 223.41 and 36 CFR 223.82 to include the higher value established by Congress, and eliminates references to the State of Alaska and purchaser credit.

The Supplemental Appropriations Act for Fiscal year 1999 (Pub. L. 105–277) also directed the Forest Service to eliminate purchaser credit procedures by April 1, 1999. The use of purchaser credit for appraised value determination and the use of purchaser credit in timber sale contracts were discontinued as of April 1, 1999. This was accomplished by making changes in Forest Service manual and handbook procedures and eliminating purchaser credit references on all timber sale contracts after that date. Purchaser credit on sales existing at that time remained which means there are still active sales that have purchaser credit. References that are being eliminated do not affect those sales or the use of existing purchaser credit.

Regulatory Certifications

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action and is not subject to OMB review. This rule will not have an annual effect of $100 million or more on the economy. Implementation of procedures to change how roads are constructed or financed was accomplished on April 1, 1999. Revision of the regulations to be consistent with this change will not affect the economy, a sector of the economy, productivity, competition, jobs, or State or local governments. This rule will not interfere with an action taken or planned by another agency, but may raise new legal or policy issues; however, these legal and policy issues are not likely to be significant. Financial relationships between the Government and timber sale purchasers will not be changed by this rule and benefits from timber sales harvests to State and local governments will not change. Little or no effect on the national economy will result from this rule. This action consists of technical, administrative changes to regulations affecting how permanent timber sale roads are constructed and financed. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Regulatory Flexibility Act

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Current procedures, implemented April 1, 1999, require that both small and large businesses finance permanent road construction prior to the harvest of timber. They recover these expenditures as the timber is harvested by paying less for the timber. The rule makes only technical changes to be consistent with the prohibitions in the act. To the extent that the rule imposes additional financial requirements on small entities, these requirements are minimal when compared to the total financing that is necessary to successfully complete a timber sale. The requirements are within the capability of nearly all small entities to meet.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This rule deals with how timber sale contract roads are financed and, as such, has no direct effect on the amount, location, or manner of timber sale road

construction. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the rule does not pose the risk of a taking of private property. There are no private property rights to be affected, because no changes in contract provisions are necessary to implement this rule and, in any case, new contract provisions would be used only prospectively in new contracts.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule were adopted, (1) all State and local laws and regulations that are in conflict with this rule or which would impede its full implementation would be preempted; (2) no retroactive effect may be given to this rule; and (3) it does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Public lands, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The Authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

■ 2. Revise § 223.41 to read as follows:

§ 223.41 Payment when purchaser elects government road construction.

Each contract having a provision for construction of specified roads with total estimated construction costs of $50,000 or more will include a provision to ensure that if the purchaser elects Government road construction, the purchaser shall pay, in addition to the price paid for the timber or other forest products, an amount equal to the estimated cost of the roads.

■ 3. Amend § 223.63 to read as follows:

§ 223.63 Advertised rates.

Timber shall be advertised for sale at its appraised value. The road construction cost used to develop appraised value means the total estimated cost of constructing all permanent roads specified in the timber sale contract, estimated as if construction is to be accomplished by the timber purchaser. The advertised rates shall be not less than minimum stumpage rates, except that sales of insect-infested, diseased, dead, or distressed timber may be sold at less than minimum rates when harvest of such timber is necessary to protect or improve the forest or prevent waste of usable wood fiber.

■ 4. Revise § 223.82(b) introductory text to read as follows:

§ 223.82 Contents of advertisement.

* * * * *

(b) For each timber sale which includes specified road construction with a total estimated value of $50,000 or more, the advertisement shall also include:

* * * * *

■ 5. Amend § 223.83 by revising paragraphs (a)(16) and (a)(17) to read as follows:

§ 223.83 Contents of prospectus.

(a) * * *

(16) The estimated road construction cost for each sale described in § 223.82(b) and the estimated public works construction cost.

(17) For deficit sales:

(i) An estimate of the difference between fair market value and advertised value, that is, the amount by which the advertised value exceeds the appraised value.

(ii) The amount of Forest Service funds or materials to be used to offset the deficit.

* * * * *

■ 6. Amend § 223.84 by revising the section heading to read as follows:

§ 223.84 Small business bid form provisions on sales with specified road construction.

* * * * *

Dated: December 28, 2005.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 06–35 Filed 1–3–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC09

Sale and Disposal of National Forest System Timber; Free Use to Individuals; Delegation of Authority

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule raises the value limit of timber that can be granted by line officers to individuals for use free of charge. Current regulations limit the value of free use timber that a designated forest officer can grant to an individual in a fiscal year to $20. Forest Supervisors are limited to $100 per year per individual and Regional Foresters are limited to $5,000 per year per individual. Free use exceeding $5,000 must be reviewed by the Chief of the Forest Service.

The ability of the Forest Service to respond to legitimate requests for free use have been restricted by these limits as timber values have increased over the years. The Forest Service is raising the limits to $200 for forest officers, $5,000 for Forest Supervisors, and $10,000 for Regional Foresters. Any request for free use in excess of $10,000 in value would still require review by the Chief of the Forest Service. No other changes to the regulations concerning free use of timber are being proposed.

DATES: This interim final rule is effective January 4, 2006. Comments must be received in writing on or before March 6, 2006.

ADDRESSES: Send written comments to USDA Forest Service, Director Forest

Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–1103. Written comments also may be transmitted via the Internet to *freeuse@fed.fs.us*. Comments received on this interim final rule, including names and addresses where provided, are available for inspection in the office of the Director of Forest Management, Wing 3NW, Yates Building, 201 14th Street, SW., Washington, DC 20250, between the hours of 8 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202–205–0893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rod Sallee, Forest Management Staff, at (202) 205–1766, or Richard Fitzgerald, Forest Management Staff, (202) 205–1753.

SUPPLEMENTARY INFORMATION:

Background

A presidential proclamation in 1891 authorized the creation of the Forest Reserves in the United States. The Organic Act of 1897, as amended, authorizes the Secretary of Agriculture to permit under "regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, needed by such persons for such purposes; such timber to be used within the State or Territory, respectively, where such reservations may be located." The General Land Office administered these lands until 1905, when the forest reserves were transferred to the newly created Forest Service. In 1905, Gifford Pinchot, chief forester, released a handbook titled *The Use of the National Forest Reserves*. This was a revision of previous regulations and instructions used to manage the forest reserves. This handbook, which came to be known as the Use Book, contained regulations concerning free use of timber as authorized by the 1897 Act. In regulations number 5 and 6, Gifford Pinchot established a value for free use at $20 in 1 year to a single applicant. This limit applied to "All supervisors, all forest rangers and deputy forest rangers, and such other forest officers as the supervisor may designate * * *" Value limits set in 36 Code of Federal Regulations (CFR) 223.8—Delegation of authority to approve free use by individuals—still reflect this original free use limit. In the ensuing period of time, higher limits were established for Forest Supervisors, Regional Foresters and the Chief of the Forest Service, but the limit for designated forest officers remained at $20. These limits were appropriate at the time they were set. However, the value of all forest products has increased significantly since those limits were set. Although forest products authorized under the terms of a free use permit are granted without charge, the establishment of value limits is a part of the monitoring and administration of the free use program.

Higher value limits for free use timber will allow forest officers and Forest Supervisors more flexibility to handle legitimate free use requests. This is especially important when dealing with Native American traditional and treaty rights.

Good Cause Statement

The Forest Service is issuing this interim final rule to raise the value limits of free use timber granted by various Forests Service employees. Implementing these higher value limits allows Regional Foresters, Forest Supervisors, and District Rangers greater flexibility to handle legitimate free use requests in light of current market values for timber. By issuing this as an interim final rule, delegated employees can immediately begin operating under these new value limits. Public comments could result in a re-evaluation of one or more of these value limits.

This rulemaking merely updates regulations that comply with the terms of law and up-dates value limits that the Department considers obsolete. There is reason to believe that these changes are noncontroversial since it merely updates an existing regulation to reflect the current value of forest products.

Regulatory Certifications

Regulatory Impact

This rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this rule is not a significant regulatory action and is not subject to OMB review. This rule will not have an annual effect of $100 million or more on the economy. Implementation of higher free use value limits will not affect the economy, a sector of the economy, productivity, competition, jobs, or State or local governments. This rule will not interfere with an action taken or planned by another agency, but may raise new legal or policy issues; however, these legal and policy issues are not likely to be significant. This action consists of technical, administrative changes to regulations affecting how individual free use timber will be handled on National Forest System lands. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rule is not subject to OMB review under Executive Order 12866.

Regulatory Flexibility Act

This rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. The rule makes only technical, administrative changes to existing regulations dealing with individual free use authorities. There is no business association in this regulation with either large or small business entities.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This rule raises the value limits of timber that can be granted by various Forest Service employees to individuals for use free of charge. Free use timber has been authorized by law since 1897. The value of free use timber does not directly infer how much timber is removed, location, or manner of removal. Those issues are still controlled by the local line officer. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

No Takings Implications

This rule has been analyzed in accordance with the principles and

criteria contained in Executive Order 12630. It has been determined that the rule does not pose the risk of a taking of private property. There are no private property rights to be affected, because the authorization for free use only applies to timber on National Forest System lands.

Civil Justice Reform Act

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule were adopted, (1) all State and local laws and regulations that are in conflict with this rule or which would impede its full implementation would be preempted; (2) no retroactive effect may be given to this rule; and (3) it does not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens On the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government Contracts, National forests, and Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The Authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart A—General Provisions

■ 2. Revise § 223.8(a) to read as follows:

§ 223.8 Delegations of authority to approve free use by individuals.

(a) Forest officers whom the supervisor may designate are authorized to grant free use of timber to individuals up to $200 in value in any one fiscal year. Supervisors may grant permits for material not exceeding $5,000 in value. Regional Foresters may approve permits for larger amounts, and in times of emergency may delegate authority to supervisors for not over $10,000 in value. Prior review by the Chief of the Forest Service will be given if the amount involved exceeds $10,000 in value.

* * * * *

Dated: December 28, 2005.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 06–36 Filed 1–3–06; 8:45 am]

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Federal Register

Wednesday,
January 4, 2006

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Stringency Increase for Single-Engine Propeller-Driven Small Airplanes; Final Rule

Federal Aviation Administration

14 CFR Part 36

[Docket No.: FAA–2004–17041; Amendment No. 36–28]

RIN 2120–AH44

Noise Stringency Increase for Single-Engine Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new noise standard for single-engine propeller driven small airplanes. This noise standard ensures that the latest available noise reduction technology is incorporated into new aircraft designs. This noise standard is also intended to harmonize the noise certification standard for propeller driven small airplanes newly certificated in the United States with those airplanes that meet the International Civil Aviation Organization (ICAO) Annex 16 noise standard.

DATES: *Effective date:* This amendment becomes effective February 3, 2006.

Compliance date: This noise standard applies to any airplane for which an application for a new airplane type design is submitted on and after February 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mehmet Marsan, Office of Environment and Energy (AEE–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7703; facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This regulation is within the scope of that authority because Title 14 part 36 of the Code of Federal Regulations (CFR) contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft.

Background

On February 11, 2004, the FAA published a Notice of Proposed Rulemaking (NPRM) proposing a change to the noise limits for propeller-driven small airplanes (69 FR 6856). A brief history of the FAA's regulation of noise stringency limits for single-engine propeller-driven small airplanes was presented in the preamble of the NPRM.

The FAA is adopting the final rule with one significant change from that which was proposed. As proposed, this final rule amends Appendix G to Part 36 by adding a new paragraph (c) to § G36.301. New paragraph (c) requires a 6 dBA noise limit reduction from the current standard for single-engine propeller-driven small airplanes having maximum take-off weight less than 1,257 lb. (570 kg) and a 3 dBA noise limit reduction for airplanes that weigh more than 3,307 lb. (1,500 kg). The noise limit increases at a rate of 10.75 dB per doubling of weight between 1,257 lb. and 3,307 lb. This change is intended to ensure that the latest available noise reduction technology is incorporated into new aircraft designs.

As proposed, the new standard would have applied to all new type certifications and to supplemental type certifications in which the airplanes underwent an acoustical change. Instead, for the reasons discussed below, this final rule will apply only to airplanes for which a new original type certification application is submitted on and after February 3, 2006. This new standard will not be applied to applications for supplemental type certificates (STCs) for airplanes already type certificated. This noise standard is intended to ensure lower noise levels from future airplanes and to harmonize the noise certification standard for propeller driven small airplanes newly certificated in the United States with those airplanes that meet the International Civil Aviation Organization (ICAO) Annex 16 noise standard.

Much of the background for the development of noise stringency levels has taken place in the international arena and through the work of the ICAO. The environmental activities of the ICAO are largely undertaken through the Committee on Aviation Environmental Protection (CAEP), which was established by the ICAO in 1983, and which superseded the Committee on Aircraft Noise and the Committee on Aircraft Engine Emissions. The CAEP assists the ICAO in formulating new policies and adopting new standards on aircraft noise and aircraft engine emissions. The United States is an active member in the CAEP activities. There is at least one U.S. representative participating on each of the CAEP working groups.

Discussion of Comments

The FAA received 34 comments in response to the NPRM. Nine commenters supported this rulemaking. One commenter who did not support the rule submitted the same comment three times. The remaining commenters either opposed the rule, or raised issues that are beyond the scope of this rulemaking. Many comments suggest that the commenters are unfamiliar with the issues of aircraft noise certification and regulations that apply to the

issuance of type certificates for aircraft. These comments will all be discussed briefly as part of this disposition of the comments.

Description of Noise Limits

One commenter recommended that the FAA change Appendix G to match the weight unit and description in ICAO Annex 16 exactly. The commenter pointed out that the description of the current noise limits in Appendix G does not exactly match the corresponding description in the ICAO Annex 16, and that the weight unit used in Appendix G (pounds) is different from the weight unit used in ICAO Annex 16 (kilograms).

FAA Response: We are not changing either the description or the weight unit used in Appendix G. The FAA believes it would be more confusing to change the description to match the exact language in ICAO Annex 16. It would also be more confusing to use a weight unit not consistent with the current weight units used in the rest of Part 36. The weight difference is negligible, and results from using pounds instead of kilograms when calculating noise limits at takeoff weight. Since the calculated difference is negligible and the metric system unit is not consistent with the weight system used in Part 36, no change is being made as a result of this comment.

International Compatibility

Nine commenters questioned why the FAA needed to make the regulations for single-engine propeller-driven small airplanes more consistent with international standards. They asked why the aircraft owners in the U.S. "have to conform to the regulation of international authorities." Two commenters opposed the new stringency limits because they believed the creation of new limits is being driven by a European desire to have excessive environmental restrictions. Another commenter did not see any need to have harmonized international noise standards since only a few single-engine propeller driven airplanes fly internationally. One commenter proposed adoption of a more stringent standard than ICAO. Another commenter thinks "the restrictions in Europe are excessive" and that "the U.S. should pressure Europe to adopt our standards."

FAA response: As explained in the NPRM, the new noise stringency limits were developed by a task group of the ICAO Committee on Aviation and Environmental Protection (CAEP). The task group included representatives from the Joint Aviation Authorities (JAA) Council, which consists of JAA members from European countries, representatives of the U.S. and European aviation industries, and the FAA.

As explained in the NPRM, the task group compiled a database of noise certification level and performance data for each model of single-engine propeller-driven small airplanes in production. The purpose of the database was to identify the effectiveness of available noise abatement technologies applicable to single-engine propeller-driven airplanes that would not affect airworthiness of the airplanes. The task group studied several stringency options for the airplanes in the database, and decided to propose new noise stringency levels that are the same as the noise levels of current production airplanes. The proposed noise stringency level reflects the current noise abatement technology that is applied to single-engine propeller-driven small airplanes in production. Raising the stringency to the level of current production guarantees that future new type designs will not produce noise levels greater than current production airplanes.

The United States was not pressured to "conform to European standards." In fact, the development of the proposed standard by ICAO includes significant participation by the United States, and included input from the U.S. general aviation industry. The United States helped develop and agreed to adopt the ICAO standard because it recognizes that aircraft noise is a concern of every ICAO member state. The U.S. general aviation manufacturers who export their products to European countries also recognize the importance of having harmonized standards. Last, the FAA also believes it is not the role of the United States to propose an arbitrarily more stringent or less stringent standard outside of the international process.

Applicability of the New Noise Stringency Limits to STCs

A number of commenters stated that the new noise stringency limits should not apply to supplemental type certificates (STCs).

For example, Hartzell Propeller, Inc., expressed support for the rule but asked for clarification on the impact this rule has on STCs. Specifically, they asked if the FAA would continue to allow STCs that are obtained using a no-acoustical-change finding.

Similarly, the Cessna Pilots Association (CPA) felt the new standard should not be applied to any STCs developed for aircraft that were certificated under the old noise level standards. The CPA supported making any new production aircraft meet the new noise standards.

The Aircraft Owners and Pilots Association (AOPA) recommended that the FAA limit its proposed noise stringency increase for single-engine propeller-driven airplanes to newly type certificated airplanes only, and exclude STCs from the new standard. The AOPA was concerned with the effect of this proposal on the development of STCs for general aviation aircraft.

FAA response: The FAA agrees with AOPA that the new standard should not apply to supplemental type certificates. Following consideration of all the comments, the FAA has determined that the impact of a new noise standard on already certificated aircraft could be significant. We also realized that given the number of STCs, the impact is almost impossible to estimate for the fleet of single engine airplanes. Accordingly, we have changed the applicability of this final rule as described below.

This final rule applies to any airplane for which a new original type certification application is submitted on and after February 3, 2006. The new standard will also apply to any future STCs related to type certificates issued under the new standard.

The new standard will not apply to airplanes manufactured under an existing type certificate undergoing modification through a STC, even if it results in an acoustical change. Those airplanes must continue to comply with the standard under which it was certificated. Section 21.93(b) of the regulations defines acoustical change as any voluntary change in the type design of an aircraft that may increase the noise level of an aircraft. The applicable noise stringency limits for an acoustical change approval are described in § 36.9. According to §§ 21.93(b) and 36.9 any airplane that has a higher noise level after a modification must comply with the applicable noise stringency limits.

The FAA intends to maintain its current policy of honoring STCs obtained under a no-acoustical-change approval. This policy allows the approval of modifications to the TC as long as there is no increase in the certificated noise level of the aircraft. Existing STCs granted under a no-acoustical-change approval remain valid under this final rule.

The final rule has been written to reflect these changes.

Impact on Airplanes in Production

Two manufacturers did not support the new noise stringency increase. They

had concerns regarding airplanes they currently have in production.

In its comments, Cessna Aircraft Company expressed concern that the rule change would place the Cessna Model 206H above the new noise stringency limit proposed for Appendix G. It stated that certification of an acoustic change to this aircraft would require considerable effort and high cost to meet the new stringency level proposed.

Maule Air, Inc., expressed similar concern that several of the existing FAA-approved Maule engine-propeller combinations would have noise levels that exceed the new more stringent limit proposed.

FAA Response: This new noise stringency limit applies to any person submitting an application for a new airplane type design on and after February 3, 2006. The rule does not affect existing TCs or application for new STCs. This final rule only applies to applications for new original type certificates, and related STCs, application for which is received on or after February 3, 2006.

Unfamiliarity With Aircraft Noise Certification Issues

A number of commenters made statements that suggest they are unfamiliar with the issues of aircraft noise certification and regulations that apply to issuing type certificates for aircraft. For example, one commenter asked that experimental and sport aircraft be exempted from the rule. Another commenter wanted to expand the applicability of this rule to experimental and older aircraft. Several commenters expressed concerns that there would be excessive costs to small airplane owners, as well as enforcement issues, when trying to meet the new standards.

FAA response: Aircraft noise certification testing is conducted when a new aircraft is introduced (type certification), or an existing model aircraft is modified (supplemental type certification) in a manner that would produce an acoustical change, such as changes in size, configuration, or engines. Each aircraft model is noise certificated to operate up to its maximum weight. An aircraft is tested at this maximum weight and must meet the noise standards for an aircraft of that weight according to the formulas adopted in part 36.

When the FAA seeks to decrease noise levels produced by future aircraft, we amend the certification rules to introduce the quieter standard. The initial establishment of a new noise standard allows time for manufacturers to adjust engine and airframe designs to meet it. This rule amends only a certification rule, and does not affect previously certificated airplanes currently in operation, nor the operation of aircraft in general.

Currently, the FAA does not require a type certification for experimental or sport aircraft; there are no noise standards applicable to those aircraft. Since there is no change to currently operating aircraft, there are no cost issues for small airplane owners.

Similarly, several commenters did not agree with FAA's assertion that the new stringency limits would impose minimal, if any, costs on STC applicants and would impose no cost on TC applicants, because airplanes in current production already meet the proposed noise standards. There was no documentation to support this claim; however, the FAA believes this comment is partially related to the commenters' unfamiliarity with aircraft noise certification issues and partially related to confusion about how the new noise stringency limits were proposed to apply to STCs.

Outside the Scope of the NPRM

One commenter did not address the proposed rule, but discussed aircraft noise in its neighborhood. Another commenter proposed that a new category of aircraft be created to address noise concerns.

FAA response: All comments concerning local airport operating noise issues and new aircraft classifications are considered beyond the scope of this rulemaking.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and this rule will further harmonize U.S. regulations with ICAO.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. The FAA has determined that this rule will make the FAA's single-engine propeller-driven small airplanes noise regulation more consistent with international standards. Our assessment of this rulemaking indicates that its economic impact is minimal. The FAA believes that this rule will impose only minimal cost on type certificate applicants because most airplanes in current production already meet these new noise stringency standards. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) Will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's

Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) does not contain any Federal intergovernmental or private sector mandate.

This rule is intended to ensure that future single-engine airplanes are as quiet as those being manufactured today, and to make the FAA's single-engine propeller-driven small airplanes noise standard regulation more consistent with the international standard in ICAO Annex 16.

The FAA had proposed that the new standard be applicable to new type certifications and to new applications for STCs for previously type certificated airplanes. While reviewing the comments, however, we became aware of an unforeseen impact of the proposed rule. We had presumed that few if any older single-engine airplanes were candidates for new STCs that involved an acoustical change. It appears, however, that applying the new standard to new STC applications could have a much greater impact than we anticipated. More recent analysis led us to conclude that it is almost impossible to estimate how many STCs might be applied for older airplanes, and that STCs for these airplanes are often developed out of necessity when replacement equipment becomes unavailable. We found that potentially thousands of airplanes could be affected, and that the cost of having to apply a new noise standard might well keep operators from making safety-related modifications. Since we are unable to confidently estimate the number of airplanes that might be affected or the cost on an individual owner, we have determined that the application of the new noise standard to previously certificated airplanes is probably not cost beneficial. That part of the proposed rule has been removed.

The FAA has determined that this final rule will help to ensure lower noise levels from new type designs and harmonize the noise certification standards for airplanes certificated in the United States with those airplanes that meet the new ICAO Annex 16 noise standards. The FAA believes that this final rule will impose minimal, if any, cost on applicants for new type certificates, since airplanes in current production already meet the new noise standard and the technology will be incorporated into any new designs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small business, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will help to ensure lower noise levels from new type designs and harmonize the noise certification standards for airplanes certificated in the United States with those airplanes that meet the new ICAO Annex 16 noise standards. The FAA finds that no new type certificate applicant would fail the more stringent noise standard required by this final rule because most airplanes in current production already meet the proposed standards. Consequently, I certify that the rulemaking action will not have a significant economic impact on a substantial number of small aircraft manufacturers.

Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

In accordance with FAA Order 1050.1E, the FAA has determined that this action is categorically excluded from environmental review under section 102(2)(c) of the National Environmental Policy Act (NEPA). This action is categorically excluded under FAA Order 1050.1E, Chapter 3, Paragraph 312(f), which covers regulations "excluding those which if implemented may cause a significant impact on the human environment." It qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation and no extraordinary circumstances exist as prescribed under Chapter 3, paragraph 304 of Order 1050.1E.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a

"significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 36

Aircraft, Noise control.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHENSS CERTIFICATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 49 U.S.C. 4321 *et seq.*, 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715, sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

■ 2. Section G36.301 of Appendix G is amended by revising the first sentence in paragraph (b); adding new paragraph (c); and revising Figure G2 to read as follows:

Appendix G to Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven Commuter Category Airplane Certification Tests on or After December 22, 1988

* * * * *

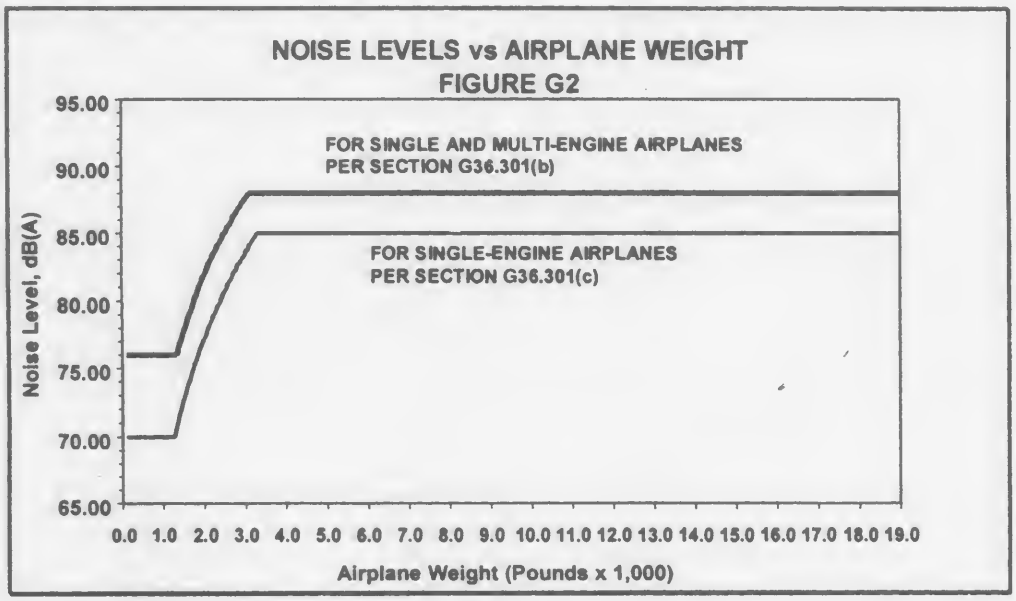
§ G36.301 Aircraft Noise Limits.

* * * * *

(b) For single-engine airplanes for which the original type certification application is received before February 3, 2006 and multi-engine airplanes, the noise level must not exceed 76 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg).

* * * * *

(c) For single-engine airplanes for which the original type certification application is received on or after February 3, 2006, the noise level must not exceed 70dB(A) for aircraft having a maximum certificated takeoff weight of 1,257 pounds (570 kg) or less. For aircraft weights greater than 1,257 pounds, the noise limit increases from that point with the logarithm of airplane weight at the rate of 10.75dB(A) per doubling of weight, until the limit of 85dB(A) is reached, after which the limit is constant up to and including 19,000 pounds (8,618 kg). Figure G2 depicts noise level limits for airplane weights for single-engine airplanes.



Issued in Washington, DC, on December 28, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 06–50 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
January 4, 2006

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 121, and 135
Maintenance Recording Requirements;
Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 121, and 135

[Docket No.: FAA–2005–23495; Amendment No. 21–87, 121–321, 135–104]

RIN 2120–AI67

Maintenance Recording Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations dealing with recording of maintenance data for large, transport category, propeller-driven aircraft. It changes the requirement for recording engine and propeller "total time in service" for certain aircraft operated under part 121. These relieving changes are necessary to correct an oversight in the rule when it was originally drafted in 1996. The amendment removes the requirement to record total time in service for engines and propellers installed on certain aircraft certificated for cargo operations. We are also amending sections of parts 21 and 135 to correct several outdated references to sections previously deleted in parts 121 and 135.

DATES: This amendment becomes effective February 3, 2006.

FOR FURTHER INFORMATION CONTACT: Emilio Estrada, Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5571; facsimile (202) 267–5115, e-mail *emilio.estrada@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Authority for this Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44713. Under that section, the FAA is charged with prescribing regulations related to aircraft inspections and maintenance.

Background

In 1996, the FAA issued significant amendments to part 121, including new requirements for maintenance records. The 1996 amendments contained new rules for tracking "total time in service" for aircraft engines and propellers. An exception to this requirement allows operators of certain large aircraft having a passenger seating capacity of more than 30 seats to use the "time since last overhaul after January 19, 1996," or to record the total time after March 20, 1997.

The FAA phrased this exception in this way so the new requirements would not apply to certain large, propeller-driven aircraft used in commuter operations, generally in the State of Alaska. The FAA intended this exception to also include large propeller-driven aircraft used for cargo operations (not just passenger operations). By using the phrase "* * * transport category airplane with a passenger seat configuration of more than 30 seats * * *" the regulation could be interpreted to exclude transport category "cargo" airplanes.

This final rule amends that exception to include the word "cargo airplanes" in maintenance recordkeeping requirements, so that the exception will include large, propeller-driven airplanes certificated as a cargo aircraft instead of a passenger aircraft.

In this final rule, we are also correcting several erroneous citations in 14 CFR parts 21 and 135:

- Section 21.197(c) cites §§ 121.79 and 135.17 when referring to amendments of operations specifications by the Administrator. In 1995, the FAA eliminated those sections (60 FR 65939, Dec. 20, 1995) and recodified them in § 119.51. The FAA inadvertently left the reference unchanged. In this action, we are replacing the references to §§ 121.79 and 135.17 with § 119.51.
- Similarly, we are amending § 135.419 by replacing the reference to § 135.17 with § 119.51.
- We are inserting a reference to § 91.1017 into § 21.197(c). Section 91.1017 contains requirements for management specifications; this information had been omitted in a previous amendment to part 21 (60 FR 65913, Dec. 12, 1995).

Paperwork Reduction Act

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0008.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the ICAO Standards and Recommended Practices and found no corresponding regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and the benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this rulemaking indicates that its economic impact is minimal because very few operators will be affected by the change. Because the costs and benefits of this action do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a full "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking under the DOT Regulatory and Policies and Procedures. We do not need to do a full evaluation where the economic impact of a rule is minimal.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this Order permits a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows:

Since this final rule merely revises and clarifies certain FAA regulations, the expected outcome will have a minimal impact with some possible net benefits, and a regulatory evaluation was not prepared. The FAA has determined this rulemaking action is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and information requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule merely revises and clarifies certain FAA regulations; the expected outcome will have only a minimal impact on any small entity affected by this rulemaking action. Consequently, the FAA Administrator certifies that the rulemaking action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded

from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 307(k) and involves no extraordinary circumstances. This rulemaking changes maintenance record requirements for certain transport category aircraft.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the Executive Order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 21

Certification procedures for products and parts, Airworthiness certificates, Special flight permits.

14 CFR Part 121

Operating requirements: Domestic, flag, and supplemental operations; Maintenance, preventive maintenance, and alterations; Maintenance recording requirements.

14 CFR Part 135

Operating requirements: Commuter and on demand operations and rules governing persons on board such aircraft; Maintenance, Preventive maintenance, and alterations.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Amend § 21.197 to revise paragraph (c) introductory text to read as follows:

§ 21.197 Special flight permits.

* * * * *

(c) Upon application, as prescribed in § 119.51 or § 91.1017 of this chapter, a special flight permit with a continuing authorization may be issued for aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flying aircraft to a base where maintenance or alterations are to be performed. The permit issued under this paragraph is an authorization, including conditions and limitations for flight, which is set forth in the certificate holder's operations specifications. The permit issued under this paragraph may be issued to—

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend § 121.380 to revise paragraph (b) to read as follows:

§ 121.380 Maintenance recording requirements.

* * * * *

(b) A certificate holder need not record the total time in service of an engine or propeller on a transport category cargo airplane, a transport category airplane that has a passenger seat configuration of more than 30 seats, or a nontransport category airplane type certificated before January 1, 1958, until the following, whichever occurs first:

(1) March 20, 1997; or

(2) The date of the first overhaul of the engine or propeller, as applicable, after January 19, 1996.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 2. Revise paragraph (a) in § 135.419 to read as follows:

§ 135.419 Approved aircraft inspection program.

(a) Whenever the Administrator finds that the aircraft inspections required or allowed under part 91 of this chapter are not adequate to meet this part, or upon application by a certificate holder, the Administrator may amend the certificate holder's operations specifications under § 119.51, to require or allow an approved aircraft inspection program for any make and model aircraft of which the certificate holder has the exclusive use of at least one aircraft (as defined in § 135.25(b)).

* * * * *

Issued in Washington, DC, on December 28, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 06–51 Filed 1–3–06; 8:45 am]

BILLING CODE 4910–13–P

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To amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound. (Dec. 22, 2005; 119 Stat. 2646)

H.R. 4195/P.L. 109–138

Southern Oregon Bureau of Reclamation Repayment Act of 2005 (Dec. 22, 2005; 119 Stat. 2647)

H.R. 4324/P.L. 109–139

Predisaster Mitigation Program Reauthorization Act of 2005 (Dec. 22, 2005; 119 Stat. 2649)

H.R. 4436/P.L. 109–140

To provide certain authorities for the Department of State, and for other purposes. (Dec. 22, 2005; 119 Stat. 2650)

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To reauthorize the Congressional Award Act. (Dec. 22, 2005; 119 Stat. 2659)

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Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin Act (Dec. 22, 2005; 119 Stat. 2676)

H.R. 327/P.L. 109–147

To allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation. (Dec. 22, 2005; 119 Stat. 2679)

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